

**Town of Milton  
Planning & Zoning Commission  
Workshop  
May 1, 2007  
7:00 p.m.**

Members Present:

Linda Rogers	Louise Frey	Ginny Weeks	Michael Filicko
Bill Brierly	Ted Kanakos	Gene Steele	

Others Present:

James Craig	Bob Kerr	John Brady
-------------	----------	------------

1. The applicant, River Basin engineering, is requesting preliminary site plan approval for the out parcel of the Milton Park Center further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.00. Proposed uses are commercial/retail.
2. The applicant, River Basin Engineering, is requesting preliminary site plan approval for an additional building to be located at Milton Park Center further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.01. Proposed uses are commercial/retail.

Linda Rogers: We will open tonight's meeting of Milton's Planning and Zoning Workshop. The only item on the agenda is to review preliminary site plan for Milton Park Center and also the out-parcel in the front. The first item on the agenda apparently is the out-parcel and if we can change the agenda I think we will be better to work with the larger piece first, unless you all have an objective. Sure.

Ginny Weeks: I spent 2-1/2 hours this morning at the planning department, going through the files of divisional and I would like to pass these out to you if I may. In here are the things, the top two pieces are the important ones. It's the letter going from Eric Evans to Mr. Zimmerman about final site plan approval which it says that they have been granted it with the corrections noted from P & Z meeting held December 17<sup>th</sup>. Then the next set of sheets is the December 17<sup>th</sup> meeting, at which Mr. Zimmerman promised to do many things; irrigation, 2-1/2 foot berm, all kinds of things. I just want to know are we going to be able to have Mr. Zimmerman complete these items before we go further or, these are what were supposed to be done to site plans. Do you have a copy Bob?

Bob Kerr: Yeah, I'm now looking.

Ginny Weeks: Under the Town of Milton P & Z commission minutes.

Bob Kerr: You've had your Evelyn Woods speed-reading course.

Ginny Weeks: It's on the same page

Michael Filicko: Thank you Ginny for doing this research. I greatly appreciate it.

Ginny Weeks: You're welcome. If you like I'd be happy to read it into the minutes later.

Linda Rogers: I don't think you need to read it, and unfortunately our attorney isn't here. And, you know, yes they haven't done any of those things that were list, or they haven't done all the things I should say, there's a large majority of things that weren't done and they need to be done,

but that's, once again it falls back onto the town's staff for enforcement. And I don't know if we legally can stop a site plan review because the town's staff hasn't the enforcement of stipulations, and did the Council agree with all these stipulations when it went before Council for them to actually be part of the approval. Is that in here as well?

Ginny Weeks: Yes it is. It's on the first sheet marked January 10, 2003, the end of the first paragraph with the corrections noted from the P & Z meeting held December 17<sup>th</sup>, 2003.

Linda Rogers: Hold up, I haven't found where you are. Give me a chance.

Ginny Weeks: It's on the very first page of the packet you were given, the last sentence of the first paragraph. What I'd like to know is maybe we can ask the gentlemen if they are planning on doing these items and if so when we can expect them to be done.

Linda Rogers: Maybe I don't have the first page everybody has got. Okay, approved with notes and then the sign variance was denied, right?

Ginny Weeks: Uh hum.

Linda Rogers: And there again, I am not legal council to know whether we legally can not review a site plan because there's been no enforcement of requirements.

Ginny Weeks: It just says that up until now, we've been under the impression that the records were incomplete, or this, that or the other thing and nobody could ever come up with a list although it had been asked for way back when, of what was required and had not been done. And so, I went fishing.

Linda Rogers: Okay, when you fished, did you actually, since you did the research, did you not the things that haven't actually been done?

Ginny Weeks: Well, on this second piece, which is the minutes of the December 17<sup>th</sup>, P & Z commission, for example, Mr. Zimmerman proceeded to inform the commission that he would agree to landscape with low shrubs or planting down the center strips in the parking area. Mr. Zimmerman also agreed to increase the height of the berms from 2ft to 2ft. 6in. Mike requested a fence be removed from the...and a fountain installed in the pond with the trees continuing along the back of the property to 22 feet. Mr. Zimmerman agreed. Linda Rogers proposed the passage for pedestrians from 22 ft. to the store areas which would be to the northeast side of Happy Harry's. Mr. Zimmerman agreed. Linda Rogers proposed 2 cart returns to be located on the plat plan. Mr. Zimmerman agreed. Crosswalks will be painted. He agreed to sidewalks located along Route 16 from the corner of Route 5, along 16 to the end of his property and along Route 5 from the corner of 16 to the end of the first phase of the project which is approximately edge of Food Lion building crosswalks will be painted in when the sidewalks pass an entrance or exit. Mr. Zimmerman agreed. On the next page, landscape, Mr. Zimmerman landscape architect informed the commission that the plantings were guaranteed for a period of 2 years and a sprinkler system will be installed for the plants around the entrance and in the islands. And Mr. Zimmerman will check with Food Lion on their lighting requirements and if they do not mind dimming them after hours he will have dimmed. There seems to be some substantial things that have not been done.

Linda Rogers: Okay, well, I mean he has the carts, right? He has the cart returns? I'm just doing the simple stuff.

Ginny Weeks: No, this needs to be looked and maybe we need to study it a little more, but I think it's something we need to consider and ask the town what the steps are to get this done. And you know, how to proceed if what needed to be done wasn't done, can we continue?

Michael Filicko: Madame Chair, I find it very difficult to continue working with Mr. Zimmerman. He has agreed to do many, many things and they've never been done. So how could we as a group conscientiously move forward? I just...

Ginny Weeks: We can move forward and look at this thing, but I want, I would like these questions answered before preliminary site review comes to us at the end of the month.

Linda Rogers: Well, and I agree with you, that these are completely issues that need to be dealt with but there again, they are issues that once P & Z says this is the way it's the way they want it and council agrees with it, then it's staff's responsibility to make sure there is enforcement.

Ginny Weeks: There may also be, and I'm not sure, our ability to say you have to finish these things before we can consider development. That is not unusual in other places, and I don't know about this.

Linda Rogers: And I'm not disagreeing with you, but we can't continually ask an applicant to come back meeting after meeting after meeting and not give them anything and keep finding reasons to not work with them. So...

Ginny Weeks: No, I have no problems with continuing with the workshop tonight.

Linda Rogers: So I think we need to establish straight up..

Ginny Weeks You've got to do these things.

Linda Rogers: Flat out. Tell Mr. Zimmerman, you're not Mr. Zimmerman, right?

Ralph Larson: That's Ralph, that these are things that need to be done and as a code enforcer it's going to be your responsibility to make sure they are done as, and probably, like where he has indicated that there would irrigation, or I should say sprinkler system whatever, can again be reiterated in what we're doing to say you gotta do it, and continually put these stipulations on the new site plans since one of the things we're building is on the Food Lion plot, which makes the change in that plot, which then you can bring into your new regulations if there are any that can be required.

Ginny Weeks: There is also a memo from, signed by a Matthew Spong, I don't know who that was who sent it to the Town, the code enforcer. It says: Dear Jim, attached please find 10 points of the revised landscape plan for the above reference project. The revised plan is based on the revised site plan and addresses the following issues raised on 9/18/01. This was quite awhile before the final site plan. But one of the things they promised in there was a 6 ft. privacy fence was added to screen the loading area between the western retail building. That's in, these are, what you have before you, are in chronological order, most recent to the present back, and this one is dated October 31, 2001. And of course, the last thing in your packet is a letter from Mr. Zimmerman saying how he's looking forward to cooperating with the Town of Milton and it has unique history and how wonderful he is and how much work he's done on historic areas and he's just so anxious to do everything that the Town wants. So I give those to you for what they're worth and I would like some sort of an answer from the Town before the next meeting on May 29<sup>th</sup>. May I request that?

Linda Rogers: Oh, absolutely. I mean there's no problem and all these things that need to be dealt with and I'm sure there is a way and our legal council is not here, so therefore I can't say that I'm right or wrong to reincorporate these things and what is going to happen with this site plan review and also last meeting we tried to talk about the fence and other things that we need to take care of that have never been taking care of and this is our opportunity to make sure that these things get done and say you can still review the site plan in my opinion; we can still review the site plan, but say you are not going to get a building permit to do anything until all of these things have been done. And that could be put in...

Ginny Weeks: And that's what I would like to know from the town, how they want to handle it.

Linda Rogers: And that can be put into the motion, okay, that you got to do A, B, C, D, E and F, and also all the things in the previously recorded plot plan before you are going to get a building permit. But our legal council is not here to say that that's absolutely correct.

Ginny Weeks: Right.

Linda Rogers: But I believe you can make it a part of the stipulation. Now, if you don't want to review this again, then you wait....

Ginny Weeks: No, I think we should go forward with the workshop tonight.

Linda Frey: I have a question. Was the applicant given a copy of the preliminary site plan requirements? I think that if you were given that in the pile of this, this board would be able to address your application much easier.

Linda Rogers: There's the attorney (7:15pm)

Ginny Weeks: Were you given this?

Ralph Larson: Well, can I say a couple things? First of all, my name is Ralph Larson.

Linda Rogers: Let me bring him up to speed before you make your speech, okay? Is that okay with you if we do that?

Michael Filicko: Let Attorney Brady have a copy first, please.

Linda Rogers: Ok. I'm sorry. It'll just take us a minute.

Ginny Weeks: Would he like my, I have yellowed out some of my stuff if he would return it to me I would be happy to loan it to him.

Michael Filicko: I can see the frustration on your face. And I know you are here because you are doing your job.

Ralph Larson: I'd like a copy of it, I've never seen it.

Michael Filicko: I don't think you were on board when this took place, so, this committee does not mean any disrespect to you personally, so please don't take our actions personal.

Ralph Larson: I believe I could probably...

Linda Rogers: Yeah, and I mean, there is a way to resolve all the issues and move forward at the same time. We just need to make sure we do it legally and follow protocol.

John Brady: Okay. What's the question?

Linda Rogers: The question is Ginny has done a lot of research to go back and find out when this was originally reviewed as a site plan and stipulations that were put on the site plan approval both by P & Z and the Town Council and that many, many of the items that were requested to be put out there were not complied with or they weren't complied with in the way Ms. Weeks and some of the others believe it should have been and our question is can we review this site plan knowing that the developer has not done all these things and we had a discussion to reference once P & Z mixed their recommendations and Council approves it and there are stipulations as the Town responsibility to make sure that they are complied with, and then is there a way we can review this site plan and put these in addition on the new site plan that is being reviewed since there are changes made to the original plot, which will be the addition of the building and, what else did we say?

Ginny Weeks: Nothing. We just wanted to know how we can make them do this stuff they promised to do.

Linda Rogers: And, can we just go ahead and move forward and review this site plan that submitted considering all these things were not done prior to having a main, whatever your title is, manager, of the shopping center to enforce things on here that he has no knowledge of?

John Brady: These were public records. A copy should be made available to him so he can review all the previous records and have you got a copy now?

Ralph Larson: I just got it.

John Brady: This is a workshop. You can't discuss how you are going to vote, or what you are going to vote, cause there is not votes on tonight's schedule. This is just a workshop. With regard to enforcement of the current approved site plan, that is done by the Code Enforcement, not by P & Z. You need to make that known to the Code Enforcement Office, which I think you have, since he is recording the minutes tonight and monitoring the taping system. I think he is well aware of the concerns and that's something he will check through his chain of command. You have no power to enforce this. Now with regard to the discussion for workshop issues, they have since that time, done a subdivision which was properly approved so when you do vote, have to look at the two different parcels, Parcel A and Parcel B. You have to look at what was approved on the final site plan for those two parcels, and if there maybe correspondence of what was going to be done, if that was not done as part of the resolution for the final approval, it's not there, it's not enforceable. So, as part of what you can do is the, as I understood tonight's workshop, was going to be, that they were going to make some suggestions and talk about things that in the manner, at the last meeting, because of the other items on the agenda, would have taken a lot of time. This is the opportunity to get those discussions in a collaborative effort. But when you do decide to vote on this which I think is going to be at your meeting on the 29<sup>th</sup>, as that is an agenda item that I thought I saw was going to be on the agenda, then that is where you can ask the code enforcement officer at that point for report of, since this has been filed has there been any enforcement activity against, for anything that was not complied with. That would be the appropriate thing because you'd have to give notice and you have to give them an opportunity. These documents tonight now give a form of notice as to some of the questions that may be asked when you are in a formal setting and you can check for the enforcement at that point. There are certain things that your ordinance allows you to require and there's certain things it does not allow you to require. We went over some of those items at the last meeting. For example, your current zoning ordinance does not require any type of water system or irrigation. That was an issue that came up at the last meeting because there has been that some of the trees and the plantings, especially on the Route 5 side at the shopping center have not been able to sustain a year or summers of growth that they look bad, they haven't been watered, and that the irrigation in place may help. Your current zoning ordinance does not even contemplate and irrigation system. So that is one thing that you may make a suggestion that that be contemplated for commercial development, but you can't hold that against him because that's not the law right now. But there are some things that are in the site plan that if they have not been complied with, there is a process to which it could be complied with. Does that help answer your question?

Ginny Weeks: Surely. Mr. Zimmerman at the December 17<sup>th</sup> P & Z meeting, upon which site plan review approval was based, agreed to irrigate everything.

John Brady: December 17<sup>th</sup> of...

Ginny Weeks: 2002. It's the second, it's actually right on the top sheet of paper, but the second piece. And at the very top it says that his landscape architect employment commission, that the plantings are guaranteed for a period of two years and the sprinkler system will be installed for the plants around the entrance and in the islands.

John Brady: Was that in the final motion? I mean it's in the minutes but if it's not part of the final motion as a detail, that's why I have been in the last nine months we've been going over the

motions and what is required and the fact, and if it's not in that final thing that was approved by Town Council, it has been held by courts to be unenforceable.

Linda Rogers: But when they made their motion according to what is here, P & Z approved final site plan with these stipulations and the final site plans are updated and corrected with changes to keep on file with the Town of Milton. Is that mean?

Bob Kerr: If the drawings weren't updated, the drawing that's on file in the Town, I think is what counts.

John Brady: Would count, and that's why I have been very careful when you have your, sorry not to talk over Bob, when you have your stipulations, if you've noticed over the last few months, I've had you list the stipulations individually so we could see exactly what is of record. I see these minutes, but I don't know exactly what was passed. That's my concern. And I see where it says approve the site plan with these stipulations.

Ginny Weeks: So we have to get the Council involved in the minutes to see what was approved.

John Brady: I need to see the council minutes and the resolution to see exactly what was approved, because if the council didn't approve those stipulations...

Bob Kerr: Site plans do not go before council.

John Brady: Then this, the final site plan, it said stipulations of final site plans are updated. So if it was not put on that site plan, and listed the stipulations, it may be unenforceable.

Ginny Weeks: I believe the site plan is there, I just glanced at it quickly, I didn't see it, but it might be there. Do you want to look at it and see if it's there, please?

Louise Frey: And if the site plan is there and the corrections were not put on it, was the final site plan passed, because it says the stipulation was included and needed to be on it in order for it to be...

John Brady: Updated and corrected with the changes, now site plans are stamped, so I need to see what site plan was stamped after this date.

Ginny Weeks: May I asked, stamped by who?

John Brady: It's usually stamped by the town, and usually it's by the Mayor and countersigned by the secretary.

Bob Kerr: No. Site plans, I believe, are signed by Linda as president..

John Brady: Have you been signing site plans?

Linda Rogers: I never signed anything that I remember. I don't think they've ever brought anything up for me to sign.

John Brady: That's what I need to look at. What do we have?

Bob Kerr: Someone has written on this 1-3-3 final, here Milton Park Center.

John Brady: Alright. And it's signed 2-6-03 by Ken Christianson, I happen to know him.

Louise Frey: At what time, when was it done?

John Brady: 2-6-03. It's on the front page. He was the engineer that was being used at that time. There should be a Town stamp on here somewhere.

Bob Kerr: I do not see one.

Linda Rogers: I thought all site plans went to council for final?

Bob Kerr: Site plans don't.

Linda Rogers: No?

Bob Kerr: Not that I recall.

John Brady: Sheet three, see if there is anything on sheet three.

Linda Rogers: Sorry for the muddy water that you're in.

John Brady: These may have been, usually they have a clock-in date, and they have a date when it's received by the Town. That's what I am trying to find, and if there's anything was...

Bob Kerr: Nothing is showing that. Somebody has gone out and checked off trees but the landscape plan does not show an irrigation system, just quickly looking.

Ginny Weeks: Thank you.

Bob Kerr: So if it doesn't show a landscape irrigation system...

John Brady: It's not enforceable.

Ginny Weeks: But the 30 in. berm is enforcement because that's on there.

Bob Kerr: And it's there. It is physically there.

Ginny Weeks: The 30 in. berm.

Bob Kerr: You said last week that it was flat in that area. There is a berm.

Ginny Weeks: Along 5?

Bob Kerr: Yes, I looked tonight and I looked last week on the way out of town from the Food Lion to the Parcel B. There is a berm. That is the only, Parcel A, was the part under consideration. Parcel B is the new parcel that is just a flat plot. There is no berm there.

Linda: The only reason I asked it was because in their request, they said they wanted to continue the two foot berm, and it's actually a 2-1/2 ft. berm and I wanted that clarified.

Michael: Mr. Brady, this may not be what you said enforceable. However, if I had a conversation with you and you came to me and asked me to do something, and I said yes sir, I will do that, yes sir, I will do that, yes sir, I will do that, whether it's legal or whether its not legal, a person's word, their integrity, and I'm having a very difficult time moving forward with anything that Mr. Zimmerman proposes and I don't want to get myself in legal trouble or detrimental of character but obviously its here in black and white, he is not a man of his word.

Linda Rogers: However, Mike, we do have a new representative that is representing him that...

Michael Filicko: I understand that.

John Brady: I have to respond this way. Okay? I cannot pass any moral judgment. Morality and fairness stop at the law books. I have to interpret the law and the ordinances you have on the book. And you have asked me if this motion in December 2002 is, with the details I have right now in front of me, is enough to go to court, in essence, to have them comply with irrigation and the answer I have to give you, because that's the essence of one of the questions, the answer I have to give you is I do not find enough in the plans and these minutes to support by a preponderant to the evidence which is a civil standard, especially since there was no ordinance in place at that time requiring irrigation, I can't find, when you look at something, is this a gratuitous promise, something made to appease, or was there a benefit conferred and if so, the benefit was enough to support that type of promise. I have not seen a transcript of the hearing that night. I do not know exactly the entire motion that was made by the P & Z Commission at that point. I am reading the minutes of a meeting and I am looking at a plan. The plan is a legal document. The minutes of a meeting are a legal document. Both are public documents. And I'm tell you right now that based on what I see, I don't have enough to tell the code enforcement officer go write him a citation for not having an irrigation system. Because that is how I have to look at this. Now, if I find that we have the transcripts of those minutes, and in that motion it says that the applicant amended the site plan to include an irrigation system for that section in that area, and that was what the P & Z approved that night, then that may be enough. But based on the review of these documents, a review of the site plan, and it's a marked up site plan that has check marks showing that somebody went out in some time in 2003 it appears, and checked off that the trees were where they were supposed to be and there was growth, and that was on the

landscape page, then that's about as far as I can comfortably go. If there were no trees out there, the plan says there have to be trees. The plan says there had to be trees that were sustainable for two years, and this is now almost 5 years later from that approval. So you are asking me, Sir, what I can legally enforce in a court of law, and I tell you from what I've seen of the documents so far, absent of verbatim transcript of the meeting, and that's why we have this new taping system, so we can have a verbatim transcript, this is what has happened in about 5 or 6 court cases across the state, and that's why I suggested that the Town buy this taping system, because towns were not having accurate transcript made of what happened. There was a case in Rehoboth where the court threw it out because they never got a transcript. Middletown had to go back 3 times on the Wal-Mart because they didn't have the right transcript and the lawyers had to recreate what they thought happened at that hearing. So trying to get to where you want to get to on what I have right now I can't get you there.

Michael Filicko: How can you get those documents that are missing?

Bob Kerr: Can I throw something out that may not be popular to anyone, but one of the things we are looking at tonight is Parcel B. It's essentially a green field site. I think John agrees with me that legally it's a separate property, separate issue, it doesn't have anything to do with A. So, to go through and review Parcel B, advise the developer what you would like to see in a final site plan. It's not necessary that everything be shown on a preliminary site plan. When they come back to you, that's when you tell them the additional things that need to be on it; those are the things that you want to see on the final. When it comes back as a final, if it's not on it, all the promises in the world from the way I was taught in college don't count. If it's not on this 24 x 36in sheet, it doesn't exist. It doesn't matter what was said, is basically what I was taught.

John Brady: If it's not in the plan, or is part of the resolution that approves the plan. That is what I needed to see if there is a separate type resolution with stipulations.

BobKerr: You can basically take care of your desires for Parcel B. Parcel A is a little muddier and I think there is a lot of mud that can be thrown around and a lot of fault on a lot of different people. It wasn't clear what was approved; there were a lot of promises made per the minutes; the town approved it, which means this body approved something; they issued building permits; they issued COA's. It's been there quite a while with no action. This is an opportunity for many of the things that I think were issues before; there's enough happening to the site that this is your opportunity to say well we didn't want it; maybe we wanted it before, it's not important this time, but this is important, or vise versa, and just go, basically forget the past, and move forward from this point. That if there's something in A & B you want this time, discuss it, add it, but make sure, not necessarily it's on the preliminary, but before you sign off on it as a final, it's what you want. It's not fair to come up after the preliminary; you can't add a bunch of things before the final, so it has to be stated when you go through the preliminary. You can't decide at the final after they've done everything, oh by the way, we want an overpass to get traffic going East on 16 into the site. It has to be said at the preliminary. I can't even tell from this, and I was at the meeting, at least I assume I was, it's a preliminary site plan review in a final, and that typically doesn't happen on the night, but that's what this was. There were a lot of problems with this, so to move forward from here, not trying to forget kinda the past, but what you want going forward. Does that work?

John Brady: Yeah, remember, we had this issue come up where both the preliminary and the final was sought by the school district, for the construction of the additions to the two schools, and I told you my reading of it that you could not do both at the same meeting. And we've



stopped doing that in order to have a separate and consecutive process where we could exactly delineate what needed to be done from step A before you went to step B.

Bob Kerr: I think there were actually 2 or 3 meetings on this site, getting through this portion, but I can't remember the actual time at this point.

Linda Rogers: There were a lot of them.

Ginny Weeks: They started way back, a year or two, before they got site approval.

Linda Rogers: It was a long time.

Bob: It was a long process.

Ted Kanakos: I have a question, we are considering these as two separate parcels. We can forward on B?

John Brady: We can't move forward on anything tonight. We can discuss it tonight.

Ted Kanakos: We know all the bells and whistles we'd like to have on B, or at least that's we're discussing.

Bob Kerr: If you are discussing those this evening.

Ted Kanakos: If in fact that becomes a reality and nothing is done on Parcel A, you are going to have basically a very different type of development, because one store will be different, this one building, Parcel B. It might have the irrigation and it might have things that we don't have in the old one.

Bob Kerr: Yes.

Ted Kanakos: Now, since the building 2 in on the original parcel, is there a way of enhancing those plans to include irrigation for the rest of that parcel that they happen to be on?

Bob Kerr: That's what I am saying that you can discuss. Now it might be one, as Mr. Brady said, there's no requirement in your P & Z ordinance that speaks to a requirement for irrigation, so, John help me out, if the developer says no...

Ted Kanakos: Now if somebody requests it, if we request it and they say we cannot insist on it.

Linda: Exactly.

Ted Kanakos: Now, if we ask for it and he says yes...

Bob Kerr: Then there needs to be a note and a design on the drawings...

Ted Kanakos: On the final.

Bob Kerr: And the final plans....

Ted Kanakos: And it has to be stamped, and then he's held accountable.

Bob Kerr: Yes.

John Brady: Correct. And it also has to be in the resolution accepting the site plan.

Ted Kanakos: Okay.

Michael Filicko: What does it involve to change the ordinances to have them state all the things that were promised that weren't followed through with? How could we change the ordinances, I know we can't go back, from this point...

Bob Kerr: It comes down to the motion that you make has to, if it's not on the drawing, your motion more or less has to...

John Brady: It's a different question he's asking.

Bob Kerr: I'm sorry.

John Brady: There is an ordinance review committee for the town and there suggestions for revised ordinances go to that committee. And then if it deals with P & Z, it comes back to you for final approval and then it can be adopted by a majority vote of Town Councils new ordinance. I think that's the process you were asking for.

Michael Filicko: Yes Sir.

John Brady: The process, because this plan is already in the paperwork, a new ordinance can not affect anything pending. So, I ask that you can learn from this and if they come back with another change in a year, they could be held under the new ordinance, but at the moment you have to deal with the current ordinance on the books, not anything proposed. But, as I said, I would like to, and I'm going to ask to check to see exactly the minutes say for Town Council meeting for that month, the next month, because I am reading Eric Evan's letter where it says "the final site plan was approved on January 6, 2003 by Town Council", so I want to see the final motion that was approved and to see what was this detail in there. And right now, I'm guessing, at the detail because I don't know what it says. But if it doesn't have anything more specific then what's in here, then we have to rely on this document, and that's why I am trying to look at a receive date, and I couldn't find one on there. I think the process now is when they're received by the Town, they are stamped in.

Bob Kerr: Ralph, do you remember, were you involved about the time this was subdivided cause that could be about the date of the subdivision of the land?

Ginny Weeks: I don't mean to interrupt, when it came through for annexation, it came annexed as 4 parcels; that the plots of the maps that are attached to the records of annexation, showed as 4 parcels.

John Brady: But I am showing it as...

Ralph Larson: (unintelligible)...the thing the out-parcel that's not been developed in the shopping center.

Bob Kerr: No, it started out as one parcel.

Ralph Larson: Correct.

Bob Kerr: It started out as one parcel and then was subdivided after annexation. It may have been several parcels when it came in and they were then combined into one parcel and then re-subdivided. But when it originally started it was one parcel, because the subdivision gave concerns over some of the water system and sewer system crossing property lines and that type of thing.

Ginny Weeks: Any of the plans that I saw attached in the annexation file they were all parcels. I didn't see a plan of one parcel, that's why I brought it up.

Bob Kerr: Were they the same 4 parcels?

Ginny Weeks: No.

Michael Filicko: Mr. Brady...

Linda Rogers: Let him have a shot.

Ralph Larson: At the last meeting, I thought we heard that big issues at that time were the fences, the landscaping and irrigation, the dumpsters and the parking spaces. And that, when we went into this workshop, we might approach as addressing each parcel individually, which we have to do anyway, A & B, addressing these areas of concern I just mentioned and going through the review notes that Mr. Robert Kerr prepared, and using that as a basis for, so to speak, a negotiation and a working out of these issues with the developers representative tonight. I would really like to see us move forward on doing that and I think a lot of these things we're discussing tonight we could discuss almost amongst ourselves rather than hold up the developer's representatives here with all of this.

Linda Rogers: What did you want to say Mike?

Michael Filicko: I don't know.

Linda Rogers: Sorry.

Michael Filicko: I do know though Bill, that the developer's representative could be here in good faith and could be a great guy but the developer is not the man of his word. That's that.

John Brady: I understand your concern, but you cannot hold, you cannot use that as a basis because there are court rulings that say that's a sufficient basis to deny any consideration.

Michael Filicko: I understand.

Linda Rogers: So really what we need to do is tell this representative if he ever gets a chance to talk, the things we expect to be on the plan and then our code enforcer, once the plan is approved and recorded, is going to be your job to make sure it gets done. Is that what we need to do? And we need to talk about what we're both willing to do if some of the things are not written in the ordinance if this property owner and are willing to do. Correct?

John Brady: Correct.

Linda Rogers: And even if some of those things include things that should have been done or what we felt should have been done before since they are making a change to whatever the parcel is the big one, A, we can put those on here. Correct?

John Brady: Yes. Things that are under the ordinance you can demand compliance with.

Linda Rogers: So, for example, the fence in the back, that didn't get done along 22B, we can say it's got to go on the new plan?

John Brady: Correct.

Linda Rogers: Ok. So are we all ready to tell this gentleman what we'd like to see out at the shopping center because it's a workshop, we're not going to vote on anything? And give him a list?

Louise Frey: Are we going to do Parcel B first?

Ted Kanakos: Well, what has he shown up with? He already knows what he was supposed to bring here tonight.

Linda Rogers: And you've got the floor? Let you have your shot.

Ted Kanakos: I'd like to hear it before we tell him what we can't ask him for. I think we're giving him our game plan away here and it seems a bit ridiculous. Right now he doesn't have to address irrigation. Doesn't seem to be quite right. These are things that I think we should discuss amongst ourselves then press you with these things. He can throw away half his notes right now.

Ralph Larson: Two weeks ago, I guess, when I was here, a lot of these things came up and I said that I'd like to work with you all on that. That's why I'm here. Once again, the Center's there, I'm not Mike Zimmerman; I don't want to go backwards. I think I agree with Bob, let's look forward. If there are some issues with Mike Zimmerman personally, you know that's whoever's issue. If you have issues with that, I can't address that. And, to be honest with you, my engineer and I came, we drove 2 hours to get here, so we would like to have a little bit of time to talk about this. We were hoping for some give and take. I thought that's what the workshop was going to be about. So, I didn't really come with anything other than the comments we got back last week, or two weeks ago, which addressed several, a lot of these items, like the fence and the irrigation system and all. And you're right, we talked about parking and dumpsters. And most of that I guess is on the bigger parcel. I guess that's the biggest issue. So, you know, I'm open to talk about these things. I don't know if want to just go blow through these things and address them and say what we're willing to do or what we can or can't do. We're willing to talk; that's why I'm here. I thought this was kinda going to be an informal workshop discussion of what you'd like to see and what we can do. I can't, you know we're talking, and I'll give you some examples. Maybe irrigation was promised in the islands, maybe it wasn't; that's going to be very

difficult to do, but we are going to present the new plan with irrigation on Parcel, the smaller parcel, the out-parcel. That will be on the plan. I said it would be. We haven't brought that plan because I thought we were going to talk about these things. I also wanted to discuss the parking issues. You know, I spent a lot of time at the Center last week with a landscaper. We talked about a lot of possibilities of enhancing what's already there but I am kind of holding him up until we see what we need to do to move forward, particularly on the out-parcel. Part of what I wanted him to do was do some work on the entrance areas but here again I don't want to do that until, I don't want to have to rip stuff back out. So we're ready to start moving on that. I'm trying to get him to clean the place up. I'm going to get trash picked up more often. We're starting anew on that part of it. I looked behind where the fence was going to be, behind, not actually behind Happy Harry's but behind the other portion of the Center. We're happy to put that up. It's, you know Bob, I would need to check with you. We were looking; the curb line is right there, I don't know if the fence would be in the right of way; there's a curbing there. I was hoping to possibly change that to landscaping instead of just a wood fence, but here again, I don't know if there's room for that. We talked about a lot of possibilities and I'm here to explore those with you, but I guess we need to keep Parcel A and Parcel B separate legally, so I don't know what direction you want to go in first. If you want to look at the out-parcel first; I know Parcel A is going to be more complicated and more difficult to work through, so.

Linda Rogers: The agenda has us doing the out-parcel first. But we can change that or whatever.

Bill Brierly: I believe one the issues was, for instance, in parking spaces, when they build this new addition and so forth. There was an area where they should have built some parking spaces on the original. They weren't there now; haven't been built yet; and yet they're going to be short on space down the road to, well, they haven't built these spaces yet and yet maybe there's some trade-offs that I thought we were going to maybe talk about maybe some trade-offs that we could look at. Trading maybe some parking spaces that they haven't even built yet but were required to in return for something else that would nice or, not only the Center but also for the Town, such as better screened dumpsters, less dumpsters, or maybe that irrigation or something like that. Any rate, that's what I was expecting that we might be looking at tonight, or trying to look at.

Ginny Weeks: Linda, I think we should do the out-parcel first.

Linda Rogers: Ok. So, let talk about the out-parcel, the parcel in the front.

Ginny Weeks: Can I just start with my favorite part which is landscaping?

Linda Rogers: Sure.

Ginny Weeks: You had given us a copy, we have gotten one single landscaping plan, do we need two, if we are going to treat each parcel independently? Unless I'm mistaken, what I just heard is that in the out-parcel there will be irrigation but not in the A Parcel, is that true?

Bob Kerr: If we are going to do B first, then lets just do B. If we get to A then we'll.

Ginny Weeks: I want to know do they need redo the landscaping plan because we have one general landscaping plan.

Bob Kerr: I think one plan works. It's a lot of expense to tear it apart in two at this point. All the information is there if you just look at one at a time.

Ted Kanakos: If we don't have an ordinance for a (unintelligible) irrigation, how can we ask for it?

Linda Rogers: He's telling us he'll give it and if he's saying he'll give it then we can put it on the plan.

Ted Kanakos: The final plan?

Linda Rogers: Right. So he's saying that he will give it...

Ted Kanakos: Even if there's no ordinance.

Linda Rogers: Right. He's saying he will give it so we want to say okay, we'll take it and we want you to put it on the plan. Right? Correct?

Ralph Larson: Yes.

Louise Frey: Mr. Brady, these are two separate parcels. If Parcel B is sold to Mr. Somebody else, in a few years from now, shouldn't we have 2 separate files on this application?

John Brady: Technically the way its been done all along has been under 00 and 01, the two different Tax map numbers have been referenced the whole time. I've not seen where the courts where the courts have required there be separate parcels plans. The ordinance does not require it. That's the problem. In a perfect world you are absolutely correct. You would have a file for 00 and then a file for 01; you would have separate ordinances for each...

Louise Frey: Mr. Brady, to make it easier, 10 years from now somebody who had previously bought Parcel B came in and wanted to change something, they are looking for the original approvals; they might not find it because it's mixed in with...

Bob Kerr: Put a complete set of drawings in each file.

Ginny Weeks: Is that what's done, James?

James Craig: From what I know, I have a small role as code enforcement officer.

Ginny Weeks: But it's all in one pile?

James Craig: Yes, and I know that they bring in I think, 10 sets of plans. That's what I know.

John Brady: I'll make a recommendation to the Town as to how they should proceed in the future. Your point is noted.

Ginny Weeks: One of the things that I was concerned on the landscaping plan, is that in previous meetings we've had almost the, it was told to us that you would be using evergreens and conifers, not deciduous plants and many of the plants that you have on here are, for example, grasses, which may die away in the winter. You have Nan Deana, which grows low; you have viburnum(sp?), which loses its leave, and you have 38 of those, and I would like to see more evergreens there because in the winter...

Michael Filicko: Ginny, I'm sorry to interrupt, viburnum, are they an evergreen?

Ginny Weeks: No, I don't believe so.

Ralph Larson: You're talking about Parcel B?

Ginny Weeks: I'm talking about because we're going to have to review the whole landscaping plan as one plan, according to our attorney. I'm talking about the whole thing, Parcel A & Parcel B, the landscaping we're going to consider one plan if presumes. I mean these things are easy to do and not expensive and I've taken the liberty of bring some photos of a Shopping Center that does not have a high berm, but is beautifully screened, and I would like to put these into the minutes as a suggestion for you to look at and follow if you would. Is that permissible Linda?

Linda Rogers: I guess it is, but I just don't know what we can actually tell him that he has to do.

Ginny Weeks: They stated they were going to use evergreens.

Bob Kerr: In the interest of trying to work together, would it not be best to just say what we would like to see and not, what was promised in the past? Just forward from this point.

Ginny Weeks: Well that's why I brought these photos. This is a very simple...

John Brady: Okay, let me just tell you, I'm on page 65 of your ordinance book, 7.14.3. The only thing it says for trees is "having all trees shall be a plant species having a crown spread of greater than 15 feet and having trunks which can be maintained in a clean condition, free of branches from grade to five feet above grade". And if further goes on about mature spread. For shrubs

and hedges, “shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two (2) years after time of planting”. That’s what you can enforce. If they want to say, other types, I don’t see anything else when I review this.

Ginny Weeks: I don’t think anything there is out of character with the ordinance.

John Brady: But, to the extent where you have a plant list on the last page of the plans, they can list what they want to plant. There’s no requirement that it be deciduous, evergreen, I’m just telling you.

Ginny Weeks: I’m not requiring this.

John Brady: I’m just saying what can be required and what can be agreed to. The requirement is on 7.14.3. If they want to agree to certain types of plants, things like that, I want to have it in the ordinance; the resolution adopting the site plan. And I think what you’ve seen is we have two things: what is required by the ordinance and what they are willing to give, and if their things they’re will to give, as long as it is put on the final site plan, and is in the resolution adopting this final site plan, then it can be enforced against them.

Ginny Weeks: I agree. All I am saying is that in the past they referred to the plan as being evergreens. And I am saying that is what they said, and when they brought the plan in, it wasn’t mostly evergreens. I am just asking him to review it and see if they could come back with evergreens as they previously stated, that’s all.

John Brady: Okay. You can’t enforce evergreens that were previously stated. If they agreed to a certain planting, and that is made part of the resolution, then that can be enforced. And that would carry on to Mrs. Frey’s question if Parcel B was sold to somebody else, would that be enforceable, yes. Anything that is of record at the time of a transfer of ownership is enforceable against a subsequent purchaser, as long as notice is given.

Linda: I have a question for you. I am not a tree person so I don’t know anything, are any of these trees that you’re suggesting to them, do they grow of a certain height or do they stay low? I don’t know one plant from another, so I’m asking you how high some of these things you’re suggesting grow?

Ginny Weeks: I went over this with a landscape person and I didn’t make big things. The hamlet is large and it’s hardy maybe, there’s 38 of those.

Linda Rogers: Now what I am saying, when you say large, how tall are you talking about something getting?

Ginny Weeks: It says...I don’t know.

Linda Rogers: I do know for a fact what does happen when some of these shopping centers that we don’t see, but I know, I’ve happened, just like the outlets; we have beautiful trees. And national corporations come in here and say “...can’t read our signs from the road and off they go”. Would the store have to leave that shopping center. So could we suggest to him that he pick a planting that’s going to average a height of 5’ or 8’ or something?

Ginny Weeks: I believe your point is very well taken, Linda, I think that trees can go some places the landscaping where it doesn’t obstruct signs. These two can give those to the gentleman, if you want I can make other copies. It was just an idea. Those are junipers and they are easy...

Linda Rogers: Now, I don’t know one tree from another, I’m only asking you the question.

Ginny Weeks: I am not an expert, that’s why I went to... We want trees that in the winter it doesn’t look like sticks out there. That’s all I’m asking.

Bob Kerr: Ralph, maybe when you come back to present the preliminary, if Matt could be present, too, to explain why he made the choices he made. Matt does landscaping throughout the state.

Ralph Larson: I mean, we could bring the landscaper in. I don't know trees...

Ginny Weeks: That's not a complicated thing that I've just shown you but then again it looks very nice because it's well maintained and so on.

Michael Filicko: Linda, and the committee members and Ralph, on, there's a member of council I believe has a degree in landscape architecture, I'm not positive, but I believe that's what his degree is in. Maybe we can consult with him...

Linda Rogers: We can't do that. Uh huh.

Michael Filicko: Just for ideas that's all.

Ginny Weeks: All we can do is ask these gentlemen to please try and...

Linda Rogers: And select their own person to bring it in. That's all we can do.

Ginny Weeks: All I'm asking is for the landscaping out there that is full and evergreen so in the winter we don't have a bunch of crepe myrtles without any leaves ...

Linda Rogers: And since we can only request that, are you willing to work with that type of thing? I mean we can't mandate certain things, so can you, I mean is that not right?

Ralph Larson: I'm willing, look, I'll bring the, if I can, I'll try to bring the landscaper in and we can go over the plan and explain why he chose what he chose. I'll tell him that you want to see more green year round. I don't think everything is going to be green year round, I bet it's going to be very difficult to do. You know that, here again, I think we are here to kind of go back and forth, you know this irrigation system we keep talking about, I'm willing to work with you on that but I'm going to ask for some things for that. You know, that's why we're here.

Gene Steele: Start asking.

Ralph Larson: Well I haven't had a chance to say much of anything yet.

Michael Filicko: I know you haven't Ralph.

Louise Frey: Are you speaking for Mr. Zimmerman whatever we are asking and whatever you are telling us that Mr. Zimmerman is going to go along with everything?

Linda Rogers: Does he still own the Shopping Center?

Ralph Larson: Do you want me to speak for Mr. Zimmerman? Yes, he still owns the Shopping Center.

Linda Rogers: Oh, Ok. I didn't know.

Ralph Larson: I am a partner of his and I manage the Shopping Center. I was not involved in the original process but I am involved in it now.

Ginny Weeks: Is Happy Harry's still doing the maintenance?

Ralph Larson: No. Happy Harry's been sold to Walgreen's as you know. I own the maintenance company that handles that manages the center now.

Linda Rogers: Oh, I thought you were going to say something. So, what are you willing to do?

Ralph Larson: Well, we'll look at the landscape; we'll try to make it greener. I am willing to talk to you about irrigation. And here again, I don't want to get...confuse the issues, you know, are we looking at strictly site B. Can we go back and forth, give and take from one to the other? I don't have a lot to ask for on site B, I have a little bit more to ask for on site A, the bigger site.

Linda Rogers: Was there anything we needed besides landscaping plan, I'm just going to ask this question, on Parcel B?

Bob Kerr: There was a few things on Parcel B on my memo that I done for the last meeting. We need to add one more parking space, it's no problem with the line up. You told me that's a problem.

Ralph Larson: Well, we found that we could fit that in.

Bob Kerr: That it access the corner there. We discussed access at the corner, that would be something that I would like to see. Bumper blocks.

Ralph Larson: I think the concern we have on parcel B, here again, I am not the engineer, the curbing around Route 5 and Route 16 out on the street, DelDot is not requiring that. I think the town asked for that, is that correct?

Bob Kerr: That is a town ordinance. It was supposed to have been there last time.

Ralph Larson: The problem was that DelDot is going to require some sort of drainage study and then we get into...we're concerned about drainage issues, and here again, that is what Scott had mentioned to me, he's not here of course, but I don't know if you are aware of that.

Gary Moore: Yes.

Ralph Larson: I mean, is that something

Gary Moore: I becomes problematic. When we actually talked to DelDot, they said we would prefer not to have any curbing there because it does become a drainage issue. So now we have a conflict between the two agencies and we're kinda caught in the middle. We'd just like to have some clarification.

Bob Kerr: This just happened on the Cannery Village project, their phase 3 & 4, the same problem between the town and DelDot, and I met with the developer and the Town Manager, and the Town Manager made it clear that it is an ordinance; that if there was new construction curb and sidewalk are to be provided. DelDot didn't want it. We reminded, DelDot chose not attend, but we reminded the developer that DelDot just spend a million and half dollars putting in curb and drainage on Mulberry Street that had it been required the first time they would have had to do it. So the towns position is curb and sidewalk along all roads.

Bill Brierly: Can I ask the gentleman's name next to you Ralph?

Ralph Larson: Gary Moore. River Basin Engineering.

Ralph Larson: Ok. I guess what I am asking though ok it's an ordinance. Is that something that can be looked at as being waived and exchange for...

Bob Kerr: Only Mayor and Council can waive.

John Brady: The Commission can make a recommendation, but Mayor and Council have the final decision.

Bob Kerr: I might add to that, after sidewalk went in along Route 5 and Route 16, I got many, many questions as to why curb wasn't put there and I said it wasn't on the plan.

Linda Rogers: And I think it was on the plan because we just kept saying sidewalk, sidewalk, sidewalk, assuming that curb and sidewalk went together. Because when I put my sidewalk in, curb and sidewalk was one and I believe that is how they got away with not having the curbing, because when the commission was sitting here going sidewalk, our minds were going curb and sidewalk, just like everything else on the town. And it was taken literally as being just a sidewalk. Because I was one of the ones that went where in the world is our curb at. I had to put a curb in, why didn't they have to put a curb in? And then I was told when we were talking at the meeting all we ever talked about was sidewalk and never talked about curbing because we all assumed they went together. And you should never assume.

Ted Kanakos: Mr. Moore, a question, or for anyone. Why is there a drainage problem if we put in curb and sidewalk?



Bob Kerr: Now the storm drainage runs off to the...it's not blocked by the curb, it runs on to the grass, and either soaks in or continues on across the property.

Ralph Larson: The drainage from the street?

Bob Kerr: From the street.

Ted Kanakos: The drainage from the street?

Bob Kerr: From the state highway.

Ted Kanakos: Okay, if we had a curb...

Bob Kerr: If you had curbing...

Ted Kanakos: How does it come from the street? Over the curb?

Bob Kerr: No, it lays against the curb.

Ralph Larson: Exactly, there's no place for the water to go.

Gary Moore: We have no storm drains there or anything like that.

Ginny Weeks: DelDot has those storm drains I guess.

Bob Kerr: DelDot has storm drains there that are designed to, or supposedly designed to handle the storm flow without there being curbing. When you put a curb in, it directs where now some of the water does go onto the grass and soak in. You put a curb in, all of it has to go to a catch basin. It might be that the road doesn't drain, all of the road doesn't drain, toward a catch basin. Some of it may drain off-site. It increases the quantity of run-off and the rate of run-off.

Ted Kanakos: Would that be DelDot's problem or ours in relation to wanting sidewalks.

Bob Kerr: Unfortunately that becomes the developer's problem in this case, because the town...

Ted Kanakos: It's unfortunate but the thing is, we have conflict here. I would like to see pedestrians being able to walk on the sidewalk.

Bob Kerr: DelDot will make the developer prove their storm drainage will not be impacted. It's just another step that Gary has to go through in getting the plans approved by DelDot.

Ted Kanakos: Do you have the capacity for this extra run-off if in fact it is created?

Gary Moore: To be honest with you, I have no idea where that's going to go. We'd have to actually, we'd have to look at the entire area to see where it goes down and analyze that. Then we would have to look at it again once the curb and sidewalk would be installed and analyze that to see where its going and we don't even know...

Ted Kanakos: Is that impossible to do or is it just part of a process?

Gary Moore: Nothing is impossible from an engineering standpoint. It's just a question of how much money you throw at it. At some point, it becomes onerous to the developer to do an improvement of that nature and we, and DelDot is not, they don't mind asking the impossible to do. I mean we had an eight-lot subdivision that drained fine, but because they thought it didn't, they asked for something that wasn't in any of their regulations or ordinances so to be subject to the whims of DelDot is a terrifying thing and we'd like to avoid that.

Ralph Larson: Something that probably would have been easier to do obviously during the original construction.

Ted Kanakos: Is there any way of putting a sidewalk in without a curb where...

Ralph Larson: The sidewalk is there already.

Linda Rogers: The sidewalk is there.

Ted Kanakos: I mean still accomplish the same through different plantings, different lawns, something, different grading, something, anything else that would allow you to go forward without having to go through all this process, and still meet our...

John Brady: You can't beat the ordinance that's currently drafted without a waiver. The issue becomes, since the sidewalk has been constructed, has there been an incidence where the road

has been flooded and if so, how bad was the rain storm that flooded that road? I take you back to June 29<sup>th</sup> last year. We've had a lot of things flooded that people weren't used to flooding. That was that day where the storm cell just sort of hung over Seaford and Milford and Milton for like 3 hours. I had a lake in front of my house. I am not in the town. But the issue is and you are exactly correct Commissioner, the issue is they're asking for an accommodation because the situation they're in if they put the curb in that may guaranteed Route 5 is flooded on any thunderstorm.

Ginny Weeks: Wouldn't DelDot require them to make it isn't?

Ted Kanakos: Now would DelDot have to upgrade their system?

John Brady: But DelDot may have to...but then to upgrade that storm basin, may be a cost that DelDot passes right back to the developer.

Ginny Weeks: One of the things that concern's me is if North Milton goes through, and we have that amount of development down there, to have a busy intersection like that without curbing, seems to me to be quite dangerous.

John Brady: It is an issue that because they're asking to come in now, that is an ordinance, they are going to have to comply with unless they get a waiver from Mayor and Council.

Ginny Weeks: Apparently, if we don't do it now, we can't go back later and do it when it does become a safety issue.

John Brady: That's correct.

Bob Kerr: Well, it can be done at any time but then it becomes the Town's responsibility.

Ginny Weeks: Which we want to avoid.

Ralph Larson: Just my suggestion, could we start with Robert Kerr's notes for these two Parcels and maybe start with Parcel B's notes? Go right through 1 – 12 that he has noted here, say yeah, nay or what we think about 1 – 12 and then proceed on with any other business? I really would like to start with Robert Kerr's notes as a foundation and then proceed wherever else we might go from there, if you don't mind.

Bob Kerr: I think we had kinda gone through the first 4, because we were just talking about the, we started out talking about the sidewalk connecting from the intersection up to the property. I think that's where we started.

Ralph Larson: Can I see where you mean on that? Can I see the whole plan?

Bob Kerr: I'm using the landscaping plan but somehow or another to, and I don't know whether it would be best to come kinda up through there or...

Ralph Larson: Oh okay, I know what your doing.

Bob Kerr: Just so if somebody crosses the street here, and wants to go to this store, doesn't have to come down.

Ralph Larson: Sure. No, I guess it depends on how it impacts the berm.

Bob Kerr: Right.

Ralph Larson: That can be worked out. It's a matter of...it may have to ramp up and back down a little bit.

Bob Kerr: I prefer not to do much of that, because it ought to be something that...

Gary Moore: Well, if you don't mind the berm being interrupted, we can certainly do that, too. Just go straight across and stop curb.

Bob Kerr: You need to put a curve in it so that somebody riding by, it looks more or less continuous.

Ralph Larson: Scott and I looked at that last week, and that should not be a problem. It was just an engineer feat I guess. I wasn't sure which note you were talking about.

Ginny Weeks: And it will be a 36" berm as it's shown here?

Ralph Larson: Well 2'6" is 30". I'm not sure what we're calling for here. It'll be what... What's it called for there?

Ginny Weeks: That's what's on the final site plan, 30".

Bob Kerr: Well there's an existing grade 50 and existing grade 53, so in the front it's kind of a 3' berm. On the side it goes from 50-52m, so it's a 2 plus a little bit berm on the Route 5 side.

Ralph Larson: Now this one stops about here now, correct?

Bob Kerr: Yes.

Ralph Larson: Whatever's on the plan. It looks like it would be an average of a 30" berm. It looks like there is some change in the grade there.

Ginny Weeks: So it would be a 30" berm?

Ralph Larson: That's what the plan says. I think it's showing 2' and 3' on the other so it's going to average 2-1/2'.

Ginny Weeks: Where's it showing 2'?

Bob Kerr: On the Route 5 side there's an existing elevation 50 and the top of the berm is showing to be elevation 52.

Ginny Weeks: And on Route 16?

Bob Kerr: There's an existing elevation 50 and the top of the berm is showing to be slightly greater than 53.

Ginny Weeks: So that that's what we'll continue on plan B, on Parcel B?

Bob Kerr: That is Parcel B, only B.

Ginny Weeks: Because there is no berm there now, but there as a berm on the final.

Bob Kerr: There is no berm shown on Parcel B originally, because when...

Ginny Weeks: I wasn't sure what plans you were looking at whether it was the old ones or...

Bob Kerr: I am only looking at the new ones.

Ralph Larson: So we are down to...

Gary Moore: Number 6.

Bob Kerr: Number 5.

Gary Moore: I'm sorry.

Bob Kerr: Number 5. A sidewalk along the east side of the property next to the entrance road. If you choose to require a sidewalk there, it would delete some of the landscaping, that would come in here, and that would take out good chunk over there.

Ralph Larson: Now there is a sidewalk along the bank now.

Ginny Weeks: What exactly are you talking about now?

Bob Kerr: This is on the entrance coming off of 16 into, yes, the road beside County Bank, and I'm looking at the landscaping plan. You can see that there is quite a few green growies (laughter) shown along the road. I'm an engineer...it's a circle. And to put a sidewalk in there would lose most of the vegetation that's there.

Bill Brierly: There's one on the other side already.

Bob Kerr: Yes, there's one on the other side. I don't know if we can add a something, do you want it?

Bill Brierly: Let's see if we want it and make a decision on it.

Linda Rogers: Do you want a sidewalk? We can recommend whether we want one or not.

Gary Moore: If we are putting a connector in at the corner to Parcel B, there is one by County Bank that exists already. It's unlikely that somebody is going to be crossing the street, in the

middle in between the two, and if they do, they certainly could use one of those two. They should be crossing...

Linda Rogers: Can we recommend or request that it not be there or is it required and we have to waive it.

Bob Kerr: I don't believe it's required. The town ordinance says along street. This is a private entrance.

John Brady: It doesn't. I don't see anything in the P & Z ordinances that would require and interior sidewalk leading from an entrance into the parking lot area at that point.

Gene Steele: We have one across the street from that right, directly from it?

Gary Moore: There's one that actually goes on the other side of the entrance all the way down into the Shopping Center, so, there's certainly enough access for pedestrians I would think.

Bill Brierly: I think greenery would be preferable myself, but...

Linda Rogers: Do we all agree to that? Just do away with the sidewalk and go ahead and have the landscaping?

ALL: Yes.

Louise Frey: Is this handicap accessible?

Linda Rogers: No, because it's on the other side.

Gary Moore: They are all handicap accessible and that is required when you install one anyway.

Ginny Weeks: And the sidewalk at the corner, the entry way at the corner that the engineer suggested that the apex at 5 & 16 that will also be heading ...

Gary Moore: That's what I was saying. If they have access here and access her, if somebody comes in here they can walk on one or the other.

Ginny Weeks: They shouldn't be able to get through.

Gary Moore: Well, I'm saying along the sidewalk.

Ralph Larson: It will be handicapped. It has to be...that's required.

Linda Rogers: Okay, what are we on now, 6?

Ralph Larson: For number 5, we are going to go with the plan as it shown here. We like going with the plan shown here with the landscaping and not a sidewalk.

Linda Rogers: Right. We all agree to that?

All: Yes.

Bob Kerr: We talked about number 6 already.

Linda Rogers: Which is?

Bob Kerr: Interval curb and gutter along Route 16 and 5.

Linda Rogers: What did we decide?

Ralph Larson: That's a DelDot issue.

Bob Kerr: Well, no. It's a town ordinance requirement.

Linda Rogers: And we can't do anything. The Town will do it.

Bob Kerr: You can request a waiver on the applicants behalf.

Ralph Larson: I guess what we would ask on this, and it's going to be a little bit of discussion on this, but we would ask for a waiver and what we're offering to do is do the irrigation. I think the big problem with the Center overall in everybody's mind is the curb appeal, and I know we looking at taking the curb away. Adding a curb isn't going to make it look better. Adding irrigation is going to help. We are asking for some give and take on that, unless there is a safety reason for the curb that I'm not aware of.

Ginny Weeks: I think we really need is a guarantee of what this place is going to look like in the future. Not that it's pretty good for its first year and a half, but a guarantee of some sort...

Bob Kerr: That comes back with ordinance. You really have nothing...

Ginny Weeks: I know. That's why I'm asking them to give us one.

John Brady: Guarantees are subjective. You can only enforce objective items as recorded on the site plan and in the resolution. What you may find is minimum standard somebody else may find is maximum standard. That's the problem with subjective standard. That's why I am trying to be very careful to do objective findings and objective things on the recommendations and in the stipulations so as to make them understanding for enforcement purposes.

Linda Rogers: Back to, we have to stay focused on this curbing and sidewalk because that is the next item.

Gene Steele: Bob, what is your take on the curb.

Bob Kerr: I'm a curb person.

Ginny Weeks: Me, too.

Bob Kerr: The ordinance requires it. In subdivisions where someone's asked for a waiver, my recommendation is always to provide it. I usually get over-voted but that's okay.

Linda Rogers: So...

Ted Kanakos: I have a question. You have a sidewalk...

Bob Kerr: I say provide curb.

Ted Kanakos: And it's so far above, another words, if you have a sidewalk, now we have low grass between the sidewalk and the street. How high is the sidewalk above the street? And does the green actually act as a curb?

Gary Moore: Typically the way we'll design the sidewalk is so that it blends in with the actual topography. So you'll see the road, you'll see grass, and you'll see the sidewalk and then additional grass.

Ted Kanakos: It's all the same level?

Gary Moore: So it kind of flows together, so, that if there is flow coming from the intersection, or any of those two streets, it would just flow naturally across the whole thing.

Ted Kanakos: Across the sidewalk?

Gary Moore: What we call sheet flow. In other words, it's not a drainage system or a ditch or a swale, it would just flow as a sheet across that.

Ted Kanakos: Doesn't this affect your quality of landscaping? I mean, if they put salt down on that road and it rains, or snow and the plows come and everything just flows right into your parking lot...

Ginny Weeks: I mean, you don't see grass thinning out, Ted, you see sand.

Ted Kanakos: Yeah, I mean, isn't that a...

Gary Moore: Sand is hard to grow grass in anyway.

Ted Kanakos: Well, no, what I'm saying is that in during the winter, if they were to put salt down and various chemicals and whatever, and it's all actually at road level...

Gary Moore: Well no matter where the salt goes, it's going to affect something somewhere.

Ted Kanakos: Well, actually if you have a curb it's going to go somewhere else.

Gary Moore: It's going to become channelized then.

Ted Kanakos: Yes, but it's not going to go over your landscaping which would probably cease to exist. I mean, I know it's all just on the streets with no landscaping.

Bob Kerr: Part of it depends how fast the plow goes by.

Ted Kanakos: Well, this is not the... what I'm saying is that we seem to be getting more and more snow, I'm not a weather man, but I know that it's been snowing fairly well and they put

more chemicals on the road, more salt and various other things. This will literally just blow into the parking lot of your development.

Gary Moore: No, not into...

Ted Kanakos: Well, how does it get...it goes over the sidewalk? What's on the other side of the sidewalk?

Ralph Larson: A berm that's 3' tall.

Ted Kanakos: A berm. And then, where does it run from there? The berm actually directs it to the retention pond?

Gary Moore: No, for the most part, it just infiltrates into the ground. And that's the way it's designed.

Ted Kanakos: So the berm is a barrier basically to prevent this.

Gary Moore: Unintentionally, yes. The berm is actually there for more landscaping. It's a visual.

Ted Kanakos: It's more than just a visual but it will serve its purpose.

Gary Moore: But it has become a barrier.

Ted Kanakos: So it's a curb on the other side of the sidewalk, basically.

Gary Moore: In essence it is, yes.

Ginny Weeks: Which means all that salt runs under all that grass.

Gary Moore: Yes. If you put the curb on the other side of the sidewalk then you changed the direction in the path of the flow of the storm water, and you've also channelized it significantly. It becomes, instead of having that sheet flow, now it's channelized. It has to go somewhere and you do end up with a possibility of flooding conditions and where do we direct it at this point. Where does it go?

Ralph Larson: It has to go in that sub-storm water pick-up.

Gary Larson: It has to go somewhere.

Bob Kerr: There is a catch basin at the intersection. There may have to additional catch basins and there has to be a study to determine if the existing storm drainage systems can handle the additional run-off with curbing. That becomes between DelDot and the developer and the town ordinance is that there be a curb.

Bill Brierly: I like staying with the ordinance myself.

Bob Kerr: If you're walking along on the sidewalk sometime and there's an accident, you'll be thankful there's a curb there.

Bill Brierly: There is a safety issue.

Bob Kerr: There won't be cars and trucks pulling off onto the grass to make a turn, which messes up landscaping. You know, as I said, I am a proponent of curbing.

Linda Rogers: So we agree we don't want a waiver for the curbing, correct.

All: Agree.

Bob Kerr: Location and size of existing signs is provided. They are not showing any new free-standing signs other than for traffic control. There's some stop signs and directional signs but I guess the question is just to make sure that if a new sign is proposed or are they going to just add to the existing sign that's there. Just something so that we are aware of what's going to happen.

Ralph Larson: Does the ordinance allow a sign?

Bob Kerr: Yes, this is a separate parcel that a sign would be allowed.

Ralph Larson: So we just need to show a sign.

Ginny Weeks: But only for the businesses on that parcel.

Ralph Larson: Sure.

Ginny Weeks: Well the existing sign that's there is on Parcel B advertising Parcel A.

Louise Frey: That will have to go. Or use that sign to advertise for the business that are there.

Ralph Larson: Can that one sign be for both?

Louise Frey: No

Bob Kerr: It could.

Ralph Larson: I think that is the way to go if it can.

Louise Frey: And the property is sold, what happens then?

Ginny Weeks: Who owns the sign?

Gary Moore: It passes along. It may take a (unintelligible) at that time, it's not our problem.

Louise Frey: It's separate parcels.

John Brady: There's no requirement in the ordinance that each parcel have separate signs.

Apparently when they were merged, per the previous one, before the final site plan was done, is when they did that, from what I can see here.

Bob Kerr: Ralph, how do you think the developer would like to do the sign, either add to it or redo the sign that's there for both parcels or do separate signs for the two parcels.

Ralph Larson: I don't know that there's, you know, the sign that's there now I don't know that there's room.

Bob Kerr: I don't know if there's room there for another free-standing sign. I don't think there'd be.

Linda Rogers: Are all the panels on that sign used?

Louise Frey: Yes.

Ralph Larson: I think they are. It will require a new sign then, but in that same location.

Louise Frey: Two monument signs next to each other?

Ralph Larson: No, a new sign.

Ginny Weeks: It says it's at its maximum allowed size. They need a variance from the Board of Adjustments.

Louise Frey: So they can make it higher?

John Brady: I believe one of your letters, one of the things tonight in these letters talked about the sign.

Louise Frey: They had asked for a variance and it was denied.

John Brady: I believe it was denied previously. I'm looking at the letter sign variance was denied for more information required on January 8, 2002.

Ralph Larson: So more information would have been needed.

John Brady: I think its 1.5...

Louise Frey: 6.1.5

Bob Kerr: I think this zoning ordinance was adopted after that sign went up.

Ginny Weeks: Anyway, whatever signage you want needs to be on the plan. That was back on the 29<sup>th</sup>, right Linda?

Linda Rogers: Yes.

Ralph Larson: As far as free-standing sign?

Linda Rogers: Free-standing sign.

Ginny Weeks: I believe it requires a new design.

Louise Frey: Design and size of the sign is what it requires.

Ginny Weeks: Under the preliminary site plan requirements.

Ralph Larson: So, can we come back showing what we'd like to do, where we would like to put, and then take it from there?

Ginny Weeks: And what it looks like.

Ralph Larson: Right.

Ginny Weeks: Because it requires design.

Bill Brierly: That's the to be determined then?

Bob Kerr: Number 8. A lighting plan has been provided. The C2-180 located on the picture should be provided with shields and I believe after, not too long ago, you went and put shields on the other lights that are there and so a note saying that they're also going to have the same shield.

Ginny Weeks: Bob, on that. In some places, the lights dim after all the businesses have closed, also. Is that needed with these shields?

Bob Kerr: Anybody know if Food Lion is 24 hours? I don't.

Linda Rogers: No, it closes at 11pm.

Bob Kerr: That was a concern when they did come in, because Food Lion has some fairly strict requirements before they move in for lighting and that's, I kinda think that's why it was a couple of years before the shields went on was Food Lion sort of....

Ginny Weeks: You'll be looking at Parcel B here. Not at Food Lion.

Bob Kerr: Right.

Gary Moore: Well we're talking about matching the shields on Parcel B with what's already existing now.

Ginny Weeks: But does that do enough that they don't need to be dimmed anymore.

Bob Kerr: It would be nice if some of the lights could be turned off or dimmed after the stores close at night, enough for minimum security but not so they can't sleep at the intersection.

Ralph Larson: As far as the lighting plan, are the pole lights the same height as they are in Parcel A?

Bob Kerr: I believe so.

Linda Rogers: Aren't they different heights? Weren't they lower out by the highway than they were in the center?

Bob Kerr: That might be something to look at.

Gary Moore: I have the lighting plan.

Ginny Weeks: Here's the lighting plan, do you have it?

Gary Moore: Yes. I think, what happened these ones on Parcel B match the existing ones. The same with the building lamps match what was existing. These are different. The ones in the center are different than the ones on the edge.

Linda Rogers: So they are going to match the ones on the edge?

Gary Moore: Let me clarify, the ones that we're showing on the edge of Parcel B are matching the ones on Parcel A. The ones that we're showing on the buildings, the new buildings, are matching the ones on the existing buildings already. So what we did was we matched equal to equal, so if it was a building lamp we matched the building lamp.

Linda Rogers: So these new office buildings are going to have channel neon letters on a raceway on the front of the stores? These buildings are going to channel neon letters on a raceway or are they going to have a box sign?

Ralph Larson: I don't think we've even gotten that far.

Gary Moore: No we didn't. We're only talking the lighting is just the...

Linda Rogers: Well he had just said the signs on this were going to match the signs on the shopping center.

Gary Moore: No, the lighting.



Linda Rogers: Oh, the lighting, oh, ok. And actually yes the Food Lion is neon inside those letters.

Ginny Weeks: Yes. We had asked to standardize, or they had offered at some point standardized signs on, if you look at the minutes of one of the meetings.

Linda Rogers: But what I am saying is if you took the face of the Food Lion, it's neon inside there. It is there. (Lots of talking) No, I'm saying you can't tell it's neon inside the letters but that's what it is. It's inside the can. Right, it's inside the can, framed in. Now the new thing is LED's.

Ralph Larson: Okay, well on the lighting. The lighting is either going to be shielded or we may look at lowering the lights a little bit. I don't know, it may not look right and the problem with that sometimes most tenants have some sort of lighting requirement for safety, for you, the customers, and for their employees. So we will work through that. We'll at least shield the lights, like the others were shield.

Bill Brierly: And will be dimmed if possible.

Ralph Larson: Yes, after hours they can be, sure. As long as there is enough coverage where if there is a break-in, they want lights there.

Gary Moore: Lowering it also changes the lighting distribution. If you lower it, you don't as much coverage per plant.

Louise Frey: (Garble)

Gary Moore: I don't remember off hand, sorry.

Bill Brierly: But they're a match to what's there you said?

Gary Moore: What we intended to do was match like lamps with like lamps.

Ginny Weeks: How high are they? The fact of the matter is whatever is on the corner of Route 16 & 5 may affect some residents.

Gary Moore: And that's what the shield would be for.

Ralph Larson: I don't want to say for sure we'll lower them because if a tenant, some of the tenants, may not want...they may require certain lumens in the parking lot. But we will shield them and then they will be dimmed or off at night, or some of them off, I wouldn't say they'd all be off.

Ginny Weeks: No, no...

Ralph Larson: We'll deal with that as we...

Ginny Weeks: That's what happened the last time. We were going to deal with things and then it wasn't on the site plan; that's what we want to avoid.

Ralph Larson: Well, I mean as we get them to plan as we get to final plan.

Louise Frey: Bob, what's your opinion about the lights?

Bob Kerr: I know how so many stores put so many requirements on that. I worry more about over-lighting the adjoining properties and not so much light on the property. I think as a general rule, America uses way too much light. Then I can walk around, I got pretty good night vision. In flying, it's amazing how much light is reflected up, but that's personal opinion not a professional one.

Gary Moore: And frankly, most of the lighting is a perception of safety issue. If there's not enough light, there's a perceived thought that the people are not safe. And, typically, it's easier to air on the side of more light than not because it makes people feel safer because it's wide open. Everybody can see everything.

Bob Kerr: A restaurant in Dover lost a pretty major lawsuit over a security light that was burned out. It was a note on Parcel A but it should also be on Parcel B. There's a wall pack, I think,

shown and there was concern that it be shining out too much, that maybe it also needs to be shielded down so that it's lighting the side of the building and not out so much. There's no information or notes on how high the building is going to be; that's item # 9. And then, what's going to, number 10, is...

Ted Kanakos: Let me just go back. Are we going to get that information?

Bob Kerr: That's required.

Gary Moore: Sure, yeah.

Bob Kerr: I'm just pointing out that it's required. And then, details should be, are to be provided for the dumpster; how it's going to be fenced.

Ted Kanakos: I have a question on that. I'd asked about that at our last meeting and for a description, what dumpster. You said there would be 12 individual dumpsters, small dumpsters?

Ralph Larson: Well, I don't think we said 12, I'm not quite sure how many we said. I think what I'd like to do is come back to you and revisit the whole dumpster issue.

Ted Kanakos: Great. Ok.

Ralph Larson: Regarding how we would shield it and what type of dumpsters it would be.

Ginny Weeks: But for Parcel B, we need to do that now.

Bob Kerr: No, they just need to provide the details. It's basically everybody agrees that there's going to be details on dumpsters.

John Brady: Because this is a workshop, technically you can't vote for anything. This is sort of like a discussion.

Ginny Weeks: I'm not trying to vote, just trying to get some information. If he were going to bring back 12 garbage pails, then now I would like to say no, I think you should revisit that for the 29<sup>th</sup>. I'm not saying that we're voting on it.

Ralph Larson: Well, I think if we come back and show how we're going to screen the dumpster, it really doesn't matter that much what's in there if it's screened as long as it's functional and it works for what the purpose of it is. And here again, I don't know. That could be depending on if there's one tenant in that building or 3 tenants, which we don't know yet, or two or whatever.

What we need to do is come back and show you how we're going to screen that and then the tenants are typically responsible for their dumpsters and it's going to be hard to control that. Now if you guys require a certain dumpster or a certain look of a dumpster you want, we can talk about that, but I don't know if that is really a big issue. It's a matter of screening I think.

Ginny Weeks: I believe you said this is a one-story building?

Ralph Larson: The front building yes.

John Brady: It said one-story but it didn't have a maximum height and we have a height requirement.

Bob Kerr: It's 212' tall but it's only 1 story.

Gary Moore: Exactly, it has a very high atrium.

Linda Rogers: Well, the ordinance has a height requirement. Okay.

Bob Kerr: Yes.

Ginny Weeks: It's not a requirement.

Bob Kerr: Not a requirement?

John Brady: If we had an architectural review commission, that would be within theirs.

Ralph Larson: When we come back, we'll bring you renderings of what the buildings are going to look like.

Ginny Weeks: Thank you. That can become part of our permanent exhibits we can keep.

Ralph Larson: Sure.

Bill Brierly: If it's something we all agree on, yes, it can be something that becomes of the exhibit.

Bob Kerr: 11. We talked about all these before but 11 was a concern that the back of the building facing Parcel A, not B, of a less quality than the other 3 sides.

Ginny weeks: I realize that we can't require, but to have fake windows like were on the library gives me acid.

Michael Filicko: I agree.

Ginny Weeks: Facing Route 5. In New York City when you go through...

Ralph Larson: You're on Parcel A now, right?

Ginny Weeks: B. The one front and back.

Bob Kerr: No, Parcel B, it's a side that faces Route 5. The front faces Route 16.

Ginny Weeks: And we want to look at the back of a stone building, a cinder block building from the parking lot?

Ralph Larson: No

Bob Kerr: That's what I am, that's what I'm saying.

Michael Filicko: Can't we have two fronts?

Linda Rogers: Not on this one.

Gary Moore: That's 4 fronts. I think it's in the best interest of the owner to make it look aesthetically pleasing also.

Ginny weeks: I was just saying that as I drive through NYC over by the GW bridge and so on in the Bronx, when that was burnt out, they had window and they put plastic that had flower pots and so on. This is much better than what the library has.

Gary Moore: But, I think all sides, if they don't look the same at least, all sides should look real nice, they should look very nice.

Ralph Larson: We're going to be showing the same finish on all sides. It's difficult to put windows in the back. If you want to look into a storage room, that's probably going to be retail out there, so they need back storage areas. It needs to be functional. But the finishes on all sides of what we're showing, what we're bringing in are the same. I can't say there's going to be windows all the way around.

Ginny Weeks: No, that's why we would like to see the renderings.

Ted Kanakos: If you look on the back of the Safeway that they built they have just a different colored stone and it's very attractive. It's solid and it's safe.

Ralph Larson: I mean there's going to be back doors and that's a delivery area also, so...

Ginny weeks: I thought the loading is on the side?

Ralph Larson: No. It's back. No, not on this. Parcel B.

Ted Kanakos: Now that is for a semi-trailer or how does that loading place work?

Gary Moore: More of a UPS kind of truck, box truck kind of thing.

Ted Kanakos: And that would be the loading area, in other words, if you had more than one store in here...2 or 3 stores? How would they get their goods? The truck just pulls in there? I mean, if you're talking about a semi like pulls in for Happy Harry's..

Gary Moore: Well, for FedEx or UPS, they all deliver at the same time, so, but for independent...

Ted Kanakos: Semi-trailers, that's what I am talking about.

Gary Moore: It's unlikely that someone renting space, or leasing space is going to need something coming out of a semi. They could use a box truck.

Ted Kanakos: Dominoes gets stuff delivered by massive truck.

Ginny Weeks: That's quite a sharp turn for a truck, isn't it Bob?

Ted Kanakos: Yeah. What I'm saying is I've seen semi trailers on more than one occasion, not only for Food Lion, but Happy Harry's and the Dollar Store gets things in, in 50' semis.

Gene Steele: That's a 29' driveway to pull in.

Ted Kanakos: Well they could pull in but that's a 12 x 40', and I'm...is it a loading dock? Or is it just...

Ralph Larson: It's ground level.

Ted Kanakos: It's just ground level.

Gary Moore: Typically what they do they unload off the back of the truck and either wheel it in on a pallet or wheel it in on a hand truck.

Ted Kanakos: Now if you were to divide this store into multiple stores, this one location, you'd have separate doors in the back that the goods would go into?

Gary Moore: Correct.

Gene Steele: He can pull off the side over here.

Ralph Larson: We've looked at the circulation of trucks and I think we're okay on that.

Bill Brierly: Alright, so the big one is number 12.

Bob Kerr: Number 12, is the irrigation system and it doesn't take a lot of discussion but either it needs to be shown or not shown on the drawings.

Gene Steele: Ralph knows how we feel.

Ralph Larson: I know how you feel about the curbing. How about if we put a second floor on the building?

Gene Steele: We have height restrictions.

Linda Rogers: If you want 2 stories you can have it as long as you stay within the height restrictions.

Bill Brierly: Can the commission like this issue a waiver for height restrictions in the ordinance?

Linda Rogers: No.

Ginny Weeks: You don't suggest any parking for a second story.

Bob Kerr: It's a parking garage...park on the roof.

Linda Rogers: We are getting way off here.

Bob Kerr: Getting back to it. Are there any other items that you would like to review with the developer on B. Anything else you'd like to see.

Ted Kanakos: Is there a requirement that so many parking spaces must have so many handicap parking spaces?

Bob Kerr: The town has no requirements.

Ted Kanakos: Does DelDot or anyone else have or?

John Brady: No.

Ted Kanakos: So you can have all handicap or no handicap, it's just..

John Brady: No. You have some.

Gary Moore: This meets the minimum

Ted Kanakos: It's the minimum, okay.

Ralph Larson: Well, no, it meets the minimum. I think it actually exceeds the minimum, to be honest with you.

Ted Kanakos: The minimum is you have handicap parking.

Bill Brierly: It just doesn't say how many.

Ted Kanakos: So folks that have a lot basically are given to handicap people.

Gene Steele: The entrance is going to be off basically on 16, correct?

Bob Kerr: 16 or Route 5. It comes off either road, and goes through Parcel A to get to Parcel B. There is no direct access from the road.

Gene Steele: But I'm saying the entrance to the store on Parcel B are going to be opposite 16? Really that is where you should have a couple handicap parking spaces. Those are where the people are going to be going into the stores.

Ralph Larson: Well there's no parking up against the front of the building. Now we can put them across the fire lane from there, but the way we have them set up now they'll be able to go around on the sidewalk.

Ted Kanakos: They can get up on something and wheel themselves around it.

Ralph Larson: I mean, we can move them to the front but then you've got them crossing traffic.

Gary Moore: Or we can move them closer down to the corner.

Ralph Larson: Or to the end, maybe get them a little closer; that's not a problem.

Gary Moore: It's not a problem, we can do that.

Ginny Weeks: Attorney Brady, does Parcel B have a separate deed?

John Brady: Yes. And a separate Tax Map number.

Ginny Weeks: Does it need some sort of a deed restriction stating that between A & B that the owner will put on stating that it will always have entry into that parcel, through Parcel A?

John Brady: That is not a requirement for the P & Z Commission. Any lawyer doing a title search if Parcel B was sold, would have to make sure that doing their due-diligence to have an easement from the owner of Parcel A, otherwise it is legal malpractice and the insurance company would be paying a big claim.

Ginny Weeks: Okay, I just didn't want to later have them come in and take away a whole lot of parking to get an entrance.

Bob Kerr: I believe the record plan showing the subdivision takes care of that.

Gary Moore: Correct. Because the owners...

Bob Kerr: Certainly the bank would have worried about not being able to get to their property.

Ginny weeks: I didn't know what the bank has.

Michael Filicko: Ralph and Gary, I know that we cannot require types of plantings, but if I consulted with a landscape architect, would you consider looking at whatever he or she would provide...

Linda Rogers: We can't do that.

Bob Kerr: They are using a landscape architect. They have submitted landscape...

Michael Filicko: Is it the same person that you used in the past.

Gary Moore: Yes, it's Matt Strong, and he was used for both.

Michael Filicko: That's my concern.

Linda Rogers: Well, we can't mandate who they use.

Michael Filicko: I know that.

Linda Rogers: And we can't use our own.

Michael Filicko: If I came up with some plantings, would you consider looking at them, that's all.

Ralph Larson: We would consider that. Can you do it pretty quickly? I mean, if we are going to redo these plants to come back at the end of the month, or our hope is, I guess they need to be submitted...

Bob Kerr: They need to be submitted by next Monday.

Gary Moore: We'll be working them tomorrow morning.

Michael Filicko: So you would need them by...

Gary Moore: Thursday at the latest. Wait a minute, they are due Monday, you said?

Bob Kerr: They are due Monday.

Gary Moore: No, tomorrow. We'd have to have the list tomorrow. We'd only have two days to react at that point.

Michael Filicko: Ok.

Gene Steele: Well you know what our concerns are about that. You can relay that to your architect.

Gary Moore: I think we can confidently relay that to the landscape architect and say hey listen, can you beef up the greenery, the all-year-long greenery, without compromising the requirements?

Michael Filicko: I mean, he did a very poor job, in my eyes. I know that my eyes are different than what someone else's is but...

Gary Moore: Unfortunately there are different ways to meet the requirements of the ordinance, and I guess what you are saying is that you have some suggestions on how you'd like him to meet that.

Bob Kerr: And Mike, you approved what he did last time.

Michael Filicko: I did approve but again I thought these issues...

Ginny Weeks: It doesn't look very pretty out there.

Bob Kerr: Again, we're trying to move forward.

Ralph Larson: On number 12, are we a go on, where are we on the irrigation system.

Bob Kerr: I think they know your position, they'll come back to you and then you can decide whether to approve or not.

Bill Brierly: So we don't know yet what they are going to come back with so this is a "to be seen" kind of thing.

Bob Kerr: It's all to be seen.

Gary Moore: I think, if I can put words in Ralph's mouth, that when we start talking about Parcel A, you know that's where the give and take comes. And, I think that some of the things we are looking at for Parcel A, we can work with you guys on, I think that the irrigation would find it's way in.

Ralph Larson: I guess what we're seeing here is, you all want something on Parcel B and I want something on Parcel A, I guess, and that's where we are. And I am fully willing to consider the irrigation on Parcel B.

Michael Filicko: Well, then Gary it's not just irrigation it's maintenance.

Gary Moore: I understand that.

Ted Kanakos: Why would you not want irrigation? I mean this is just a sparse looking shopping center on the corner that seems every month to look a little worse. Isn't it expedient for management to want this, to make it attractive?

Ralph Larson: Well, I met with the landscaper and we're working on that. Most shopping centers in Delaware do not have irrigation, so there are ways to make, in fact, I don't know of hardly, I can't think of any, there might be some down in Rehoboth area or something... So something else has been done wrong throughout the process; that's what I am trying to address.

Ted Kanakos: We have better trees that are will sustain without irrigation.

Ralph Larson: And maybe soils or something like that but there are very few shopping centers in Delaware with irrigation. So it is an anomaly for us to do that. Something I am willing to consider obviously. And look, I want it to look good too, we've talked about this.

Ginny Weeks: How does Five Points keep their place so nice looking?

Ralph Larson: I'm not sure what...

Gary Moore: Which one is that?

Linda Rogers: Are you talking about Village of Five Points?

John Brady: Village of Five Points in Lewes, there's a Food Lion, a Happy Harry's, I don't think that's one of, although it fits the architectural style of Mr. Zimmerman's other Happy Harry's locations. I don't think that's one he developed.

Ralph Larson: Yes it is, but Happy Harry's is not in the same center as that.

Gary Moore: It sounds like we need to start moving over to Parcel A's list here and then somewhere in there we may find a trading, some kind of trading point for point # 12 under B maybe.

Bob Kerr: Item 1, it's the same thing, about the sides of the building, we've already discussed with B. Two - bumper blocks. We talked about that in B, it's basically the same thing, to keep cars' bumpers from hanging over into the travel lane, in this case. Item # three is probably one of the ones where there'd be more discussion. There's 69,107 sf of existing building; we're adding 6,429 sf for a total of 75,536 sf and paraphrasing that, "requires 378 parking spaces". After the new building is constructed, there are 338 existing remaining parking places. They are showing 18 spaces to be new, and 22 are shown as existing but have not been constructed. It's the ones around the existing storm water pond. And 13 new spaces are shown behind or to the east of Happy Harry's. They are, if you wish to require some of the parking places around the storm water pond to be constructed, both the new and the ones that were shown as existing but do not exist, without building the ones behind Happy Harry's, there would be about 10 short. As we kind of talked about last time, they are short of parking places but whether there is a lot of asphalt out there and it sounded like you would rather have more landscaping than parking spaces, so that becomes a parking waiver I believe you are allowed to do under the ordinance, but it does require an action on your part. And I'll stop there to see if you have any questions.

Gene Steele: You'll show the actual parking spaces on the final plan?

Ralph Larson: No.

Bob Kerr: The question to be, and I know you can't vote, but it's a gentleman's agreement, is whether you want to see 378 space or whether you are willing to not require the full number of parking places in lieu of seeing more landscaping in those areas or some other item that you would like to see on this portion of the property.

Bill Brierly: Such as irrigation.

Ralph Larson: I would like to suggest...

Michael Filicko: I'm willing to give up the parking spaces.

Ralph Larson: What I'd like to suggest for you to consider is the spaces we're showing behind the Happy Harry's that, you know, right now, I guess that would eat into what's landscaping now, because that's the dumpster closure. Rather than take that grass out and asphalt that, I'd rather not do that. So I'm asking for that. In addition, all the parking around the pond, and granted some was supposed to be there, and here again I'm not Mike Zimmerman, I don't know what happened, but I looked at it again tonight and I looked the other day, and that would be digging deep into the grass around the pond and it would be, and nobody would ever use it. I don't see that ever being used; that parking there. So, and I think that's the only areas we'd be talking about.

Bob Kerr: Those would be the ones that...

Ralph Larson: What's the total number of spaces on that?

Ted Kanakos: 27 around the pond.

Bill Brierly: It says approximately 30 spaces to be constructed along storm water pond.

Bob Kerr: It's 40 around the pond and behind Happy Harry's.

Ted Kanakos: What are they asking for?

Ralph Larson: What we'd be asking for is to not construct parking around the pond or behind the Happy Harry's. Behind the Happy Harry's, and that's kind of a double issue, you know, we can talk about the irrigation vs. the parking, but also, I need room for dumpsters back there.

Ted Kanakos: There's a slew of them back there all of a sudden. I counted 14 on the property and I think there was originally a lot less. There a lot of dumpsters back there.

Ralph Larson: Just behind that section.

Ted Kanakos: I think there are 9 behind that section.

Ralph Larson: I know right now there are some pods out there because Walgreen's is remodeling the Happy Harry's, so they are making changes so I know they got extra equipment.

Ted Kanakos: But the interesting this is that when the trucks that pick up the dumpsters, they place them in the corners, so they can get in and out easily. They've all taken a corner and then prime spaces to turn around.

Ralph Larson: Typically they are close to the building for a couple of reasons

Ted Kanakos: These are across the lot.

Ralph Larson: I know that this...

Ginny weeks: And the ones next to Food Lion for god's sake. And now there's a big huge dumpster out there, or there was.

Ted Kanakos: They just bring them in and out as they need them.

Ralph Larson: Behind Food Lion?

Ted Kanakos: I counted 14 altogether.

Ralph Larson: Well, we really don't need the space for the dumpsters, I mean the dumpsters are kinda scattered all over there anyway. But, in exchange for not putting that parking there, what I would like to do is and maybe this was supposed to be done originally, I don't know, is put some course type of shrubbery along the back here. This is where the fence was supposed to go?

Bob Kerr: That's where the fence was supposed to be and that is the property line.

Ralph Larson: And I don't know if we can put a fence there, if we can put shrubbery there, I mean I would rather put shrubbery or tall trees.

Bob Kerr: There is room for a fence, I do not believe there is room for shrubbery.

Ginny Weeks: Linda, Mdme. Chair, as part of this, could we just review the notes from November 21, 2006 when Connie Malmburg was here, she's part owner I believe.

Ralph Larson: "He"

Ginny Weeks: In the minutes of that, he says that there was concern about landscaping so Matt Spong brought his landscaping plan. Included with that will be a watering system because we know there's some concerns that were raised about the survivability of some of the plants. We asked that be on the plans submitted to us and it wasn't when they came in. And then it goes on that Matt Spong spoke and he said that "on Route 5 we would continue the 2' high berm", this all goes to the back also, "add canopy trees and an evergreen hedge along there in addition to some clusters of evergreen trees. We would be adding about 12 canopies along Route 16. There is an existing hedge of holly that's already there and we would preserve that. We would be adding 12 canopy trees and we are proposing some 3" caliber trees which are 12-14' tall. We are adding 7 elfin green trees, and 100 medium height evergreen shrubs along Route 5 and the entrance to the parking. We are adding an evergreen hedge in front of the proposed retail suite". See everything was evergreen. Every time he spoke it was evergreen.



John Brady: To get a copy of those minutes, if you go to the town website, [www.ci.milton.de.us](http://www.ci.milton.de.us), we can pick through the P & Z minutes from last year on the website.

Bob Kerr: Just put Milton in your search engine and you'll get it.

John Brady: I think we brought a copy of those minutes tonight to give them. We don't have an extra copy?

Ginny Weeks: No, this is from the last meeting. They can have my copy when I'm done and I'll get another copy.

John Brady: December, there's from December 21<sup>st</sup>, I don't think they were here then.

Ginny Weeks: November 21<sup>st</sup>.

John Brady: November, I was here that night. I just want to make sure they get a copy of what you read from.

Ginny Weeks: They can take this one as soon as I'm finished with it. And then it was also said that they had 2 double dumpsters for each proposed retail use that later on they said that they're trying to do basically 2 front facades, there would be standard signage on the buildings; the façade should look as the front as much as possible. Dumpsters, will there be a divider or a fence around the dumpsters? These have 3 sides and to fit.

Linda Rogers: You are talking about up by the new building, right?

Ginny Weeks: All over.

Linda Rogers: No that was the new building.

Gary Moore: No that was the concept plan for what we're reviewing this evening.

Linda Rogers: For the new part up there. What we're talking about now is the dumpsters behind the existing part, correct?

Gary Moore: Correct.

Bob Kerr: We're talking about behind the Happy Harry's. Again, that was for the concept plan and essentially anything said during a concept doesn't count until it's approved as a preliminary plan.

Ginny Weeks: Ok, so whatever Mr. Malmberg said has no value?

John Brady: It has value to the extent that the board accepted it for concept plans however preliminary site plans incorporate all those discussions and that's what they are going to come forward with at the meeting at the end of this month.

Ginny Weeks: Because Mr. Steelenbeck also said that he wanted totally enclosed dumpsters. Here you go, you want a copy of this?

Gary Moore: No, I'll be able to get that off the web.

Linda Rogers: But behind Happy Harry's, the Dollar Store and all those which is the area that we're at right now, originally, way back when we had requested that it have fencing and it was on the plan that it be fenced. Correct?

Bob Kerr: The fence was to extend behind the parking spots that are shown; it's not really behind Happy Harry's, it's more behind the Dollar Store and the strip stores are. There was to be a fence there and then the rest of it down to the end of Happy Harry's was to be landscaped.

Linda Rogers: And we got?

Bob Kerr: You got landscaping that was as shown on the drawings. You did not get a fence.

Linda Rogers: We did not get the fence.

Bob Kerr: And there's a dumpster pad shown that was to be the location for the dumpster... And there's not even a dumpster on it. There's not a dumpster on the pad, and I don't believe there's any fencing around the pad. The dumpsters sit more or less directly behind the exit to the store, where they would bring the trash out, throw it in and get back in...

Ted Kanakos: Well, there are two right up where the fence would be.

Ralph Larson: There is one there right now.

Bob Kerr: They move around.

Ted Kanakos: There's at least two, and that's where the trucks find it expedient to drop them off and they're big ones.

Ralph Larson: Well the dumpster issue, I mean here again multiple tenants, They are going to have their own dumpster, their own trash company. Working for Happy Harry's for 20 years, I know how retailers think. Number one, you don't want kids taking out trash at night and having to walk, you know, wander around the parking lot. Typically that's why they are near the building or close enough and convenient. Number two, to your point that the trucks need to get to the dumpster, pick it up, dump it and get back out and that is kinda hard to control because the guy comes at 5 in the morning and he just picks it up and puts it wherever he puts it. What I'm offering to do is screen this and we can limit the amount of dumpsters if you'd like but we need more than one or two. We need to be able to function. But if we screen it properly, it really shouldn't matter a whole lot where the dumpsters are back there, if you can't see them as long as they're functional and they serve the purpose.

Gary Moore: We proposed to screen it with shrubbery, not a fence.

Gene Steele: Bob says there's not enough room back there for shrubbery.

Ralph Larson: Right. So we can do, I mean I don't have a problem with the fence. Personally I'd rather see shrubbery than a fence, but...

Bob Kerr: I don't think there's room between the existing parking spots and the road right-of-way.

Michael Filicko: Again Bob it might depend upon the type of shrubbery and....

Ralph Larson: I was back there, it is very tight.

Bob Kerr: It's about a foot.

Ted Kanakos: How would shrubbery make it more convenient?

Bob Kerr: Between the curb and the right-of-way, which is 1 foot. If the shrub is wider than a foot, and extends off the property, DelDot can come along and rip it off.

Ted Kanakos: But we don't want shrubs, but that's what he wants?

Bob Kerr: He would prefer to put shrubs. I'm saying I don't think they will fit.

Gene Steele: And then Ralph said he doesn't mind putting up the fence, so...

Ralph Larson: Yeah, I mean we can put the fence up. I thought you would prefer to see shrubs.

Ginny Weeks: Can you move the fence in now that there will be no parking if we don't...

Bob Kerr: The parking exists.

Ralph Larson: There's a curb, this is the area where there isn't.

Bob Kerr: It's the area where there's existing parking.

Gene Steele: In afterthought, that's right behind the Dollar store and the existing retail.

Ralph Larson: You'd have to actually remove the existing parking in order to put up the...

Ginny Weeks: Well which parking does he want removed?

Bob Kerr: Around the pond.

Linda Rogers: I think we should just get him to put a solid fence up and then it will block the dumpsters.

(Talking amongst members while looking at plans)

Linda Rogers: We've got two discussions going on here. We got fencing down here and parking down here. So we need to stay consistent and right now we need to decide whether we are going to fence or whether we are going to landscape, so that we don't off the...

Ralph Larson: What I'd like to do is a fence or landscaping.

Linda Rogers: Right.

Ralph Larson: Not do both.

Linda Rogers: In back behind those stores, there's not very much space.

Ralph Larson: Well, behind the stores I think we have to do a fence.

Linda Rogers: A fence, ok.

Ralph Larson: We will show some sort of wood privacy fence.

Linda Rogers: Ok.

Bill Brierly: It sounds like to me that the fence is the option that we have; just about the only option.

Ralph Larson: Now behind the Happy Harry's we can do, I don't want to do a fence and more landscaping but we can do one or the other.

Linda Rogers: No, I would put the fencing where it's required to be because you don't have space and then where you have an ample space to put good landscaping in go with the landscaping. And that way, most of your dumpster will be hidden by the security fence, or the privacy fence whatever you want to call it.

Ralph Larson: Well show what we're going to put in there on the next one. Pretty much all of them except the Happy Harry's.

Linda Rogers: Except for Happy Harry's.

Ralph Larson: It will be hidden by the landscaping.

Ginny weeks: And the Dollar Store.

Gene Steele: Happy Harry's can be in a corner, their dumpsters. Maybe we can have some tall shrubbery in the corners and...

Ralph Larson: Well, what we are going to show on the landscape plan is tall shrubbery, can't remember. You know the plants near the County Bank? There's some tall shrubs where the end of the retail and the County Bank kind of line up? They are about 6 or 8 feet tall? I can't remember what the names of them are. That's what I talked to the landscaper about putting in. My hope was to do the whole thing, but you're right, they are not going to fit where the fence goes.

Ginny Weeks: Because if I remember correctly, across the street there are holes, is that right?

Ralph Larson: Sure, yes. We'll show that, but I'd rather not do a fence and landscaping. That doesn't make sense.

Ginny Weeks: I don't care. As long as these homes don't look back and they'll be building dumpsters.

Linda Rogers: Bob?

Bob Kerr: The majority are dumpsters.

Ralph Larson: There's a berm there too.

Louise Frey: The berm is two feet high now?

Gary Moore: I don't...

Louise Frey: Well, if they put a fence up, how high is the fence going to be?

Linda Rogers: There's no berm in the back.

Bob Kerr: There's no berm.

Louise Frey: Bob told me there's a berm.

Linda Rogers: Not in the back.

Ralph Larson: I think there is behind the Happy Harry's.

Linda Rogers: Behind the Harry's but not where the fence is going to be.

Louise Frey: So the fence will not be at the top of the berm?

Gary Moore: There's not going to be a fence there. It's only going to be a fence where there is existing parking.

Gene Steele: There is no berm behind the Dollar Store.

Ralph Larson: Exactly. You can see where the...

Gene Steele: It's just not wide enough; it's a narrow area.

Ralph Larson: That's where the fence will go.

Bill Brierly: So the fence will be right on the outside of the curb there.

Gene Steele: Exactly.

Gary Moore: I'd like to recap this if we can. The commission is basically suggesting to put the fencing where we can't put shrubbery in back of the Dollar Store, etc., and put good screening shrubbery behind the Happy Harry's, where this is no current.... Now that will, the understanding there is that will need a support for a waiver of parking if we do that.

Gene Steele: Well, how many spaces are we talking about waivering?

Bill Brierly: A minimum of 13 anyway.

Ginny Weeks: Is 13 behind Happy Harry's or the Dollar Store?

Gary Moore: And keeping in mind that you're all probably familiar with that parking lot's never full so the question is we're not really, we're giving up impervious. We are actually creating something better by not fitting the ordinance if you will. But we are talking about the possibility of no parking behind the Happy Harry's and no parking around the storm water management.

Gene Steele: So you're talking 30 spaces?

Gary Moore: It might be closer to 40.

Ginny Weeks: You want that just for putting some landscaping behind Happy Harry's.

Gary Moore: Nope, Nope.

Ralph Larson: No, and for putting irrigation in on Parcel B. Now what I can't tell you I can do is irrigation in those islands. I don't know without tearing up the whole parking lot I don't know how we can do that. But whatever landscaping we do on the landscape plan for the new, I guess...the landscape plan encompasses from here to over to here?

Bob Kerr: Yeah. So everybody's...

Ralph Larson: Well the dot, dot in there...

Bob Kerr: Yeah. The landscaping they're shown to upgrade is from the entrance on Route 5 along Route 5 in Parcel A and then the two sides, well all three sides of...

Ginny Weeks: Between the two entrances?

Bob Kerr: Yes. And, I'll throw out that perhaps giving up parking spaces for irrigating B and the Parcel A which is being upgraded which gives you the entrance of Route 5 and 16 to be irrigated. Doing the islands is very difficult. It means cutting across paving and it's just a lot more difficult to try to do irrigation on islands.

Ginny Weeks: That sounds, I don't know about the rest of you, but that sounds sort of ok with me, but the end of it is not just the irrigation; it's also the landscaping along that area.

Gary Moore: Well, also keep in mind that we're removing three of the six islands in the process of doing this plan, so there's only going to be basically 3 islands left, so there's not going to be that much to consider about the whole irrigation issue. The rest of it...

Louise Frey: You take away green to put blacktop?

Linda Rogers: No.

Gary Moore: No, not at all. We are replacing blacktop with building, in the existing Parcel A. We're replacing blacktop with building and we're moving the landscaping areas around. So, and we'll be able to irrigate basically all of the road frontage.

Linda Rogers: So you are proposing to do irrigation from the entrance on 5, if I am correct, all the way around to entrance and up into the parking lot off of 16. Correct? So you are talking about irrigating this much, right?

Ralph Larson: Right, on the plan, on the bigger plan, there's a dotted line that shows this whole area.

Linda Rogers: I just want to make sure I'm clear that this is what's going to be irrigating this part.

Gary Moore: The road frontage basically.

Linda Rogers: And the entrance.

Ralph Larson: That's what we're proposing to do in exchange for the waiver on the parking.

Bill Brierly: From what I understand in terms of the waiver on the parking, you're looking for a waiver on the 30 spaces around the storm water pond and the 13 behind Happy Harry's. I'm assuming that that is all it is.

Ralph Larson: Is that going to make us short anywhere else. I don't know what the number is but this would be the waiver here and here.

Gary Moore: I think what we're saying is once you remove those two sections of parking, whatever is left is what we're asking to be sufficient.

Ralph Larson: A waiver on the parking around the storm water pond and behind Happy Harry's.

Bill Brierly: Possibly one parking spot on Parcel B.

Ralph Larson: We're okay with that?

Gary Moore: Oh yeah, we can add that in, that's not a problem.

Ralph Larson: We're going to move handicap further too.

Gary Moore: That makes it...I think we left space off because of paths of travel and two cars can't make it around there. Now if everybody drove a smart car we'd be ok, but people are driving SUV's nowadays so that made it an issue to put that in there, and I think that's why that's left out.

Ralph Larson: Can we ask that if there's a problem adding that one spot required on Parcel B engineering-wise that we get a waiver on that?

Gary Moore: And Bob and I can discuss that.

Ginny Weeks: It all depends on the irrigation and landscaping...?

Ralph Larson: We've already talked about that.

Gary Moore: Well, I think we've...

Ralph Larson: I mean, I want to keep going forward instead of keep going back to all that.

When we come back we're going to show these things and you are either going to say you'd said you do and said you do. We're going to show the parking not there, ok?

Michael Filicko: Gary and Ralph. We have lived with that area for five years, come on Linda give me chance...

Linda Rogers: I am.

Michael Filicko: And just say I would like an opportunity, and I don't even know if I can find someone that would volunteer their time, that's a landscape architect, to do something aesthetically, much more aesthetically appealing than what's there now. And, in my opinion, as an amateur landscaper, if you drive by my house I think it looks great. And I think we should be given the opportunity to have a landscape architect, if I could find someone to volunteer their

time, to do the plan, other than to say it has to be done by tomorrow, because we've lived with that for five years.

Ralph Larson: Why don't you let us come back with a plan, and then you can review the plan. Let us come back and let's see what we bring back. We've taken all your input and we're going to bring the plan back.

Michael Filicko: And if I can find someone to come up with a plan as well, would you take that into consideration?

Ralph Larson: Are you talking about a plan for the proposed new portion or are you talking about reinventing the whole wheel?

Michael Filicko: Not reinventing the wheel with what you are proposing.

Ginny Weeks: Along the road.

Gary Moore: Again, I don't want to speak for Ralph but, if it doesn't slow the process down, I think that that would be a lot easier to do. But, you know what I mean, if it takes 3 or 4 months to work through the landscape plan and we don't go anywhere until that's done, I think that might be an issue.

Michael Filicko: I'll try to...I will do my best and I stand here...

Ralph Larson: And how do I know you are not going to come back with a plan that costs a \$100,000 landscape plan. I mean, we're trying to, you know....

Bill Brierly: Speaking for myself, I am going to trust that the developer is going to show due-diligence that we sometimes say in coming together with a good landscaping plan. Also, on items 4 – 9, it seems like those are just okay, so they're almost like done deals, those don't really needed to be discussed.

Gary Moore: They're repeats. Some of them are exactly the same as what we've already discussed and answered in Parcel B.

Bill Brierly: Because they are pretty much things that are required anyway. The engineers just pointing out...

Gary Moore: The building height is required, and that kind of thing.

Louise Frey: You have to say it so that he does it. It has to be one the tape so that he does it because the last time it wasn't done, Bill.

Bill Brierly: Okay.

Michael Filicko: Bill, the last time it was done they were using the same landscape architect. And look at it.

Ralph Larson: That landscape architect was working under different direction, okay. He's still a landscape architect, he's a professional, personally I don't know, but he's done a lot of plans. He's going to be working under different direction. So I am asking that you allow us to come back in - we've taken your input for several meetings – allow us to come back in with a plan, because we are trying to be timely here and we're trying to work with you. He is a professional. Let us bring a plan back and we'll welcome your input at that point. Fair enough?

Michael Filicko: Fair enough.

Ralph Larson: Just remember, there is chocolate ice cream and vanilla ice cream – people like different things. We're going to come back with the best we feel we can come back with. I'm not going to make everyone of you happy I'm sure.

Linda Rogers: What's the next item on Bob's list?

Bill Brierly: Number 4 was the integral curb and gutter as shown along Route 5.

Linda Rogers: We've already said we wanted to go with curbing.

Bill Brierly: We're going to go with curbing.

Linda Rogers: But this is for Parcel A, so we want to make sure we say...Okay, the next thing.

Bob Kerr: Five is the location of the existing signs. Six is the...there's no information shown on the building height. Seven is the note about lighting on the left side of the building, the wall packs, and also the shields. And then eight is the details on the fencing/screening around the dumpster area and nine is the irrigation system that's been discussed.

Louise Frey: Can we go back to signs to make sure they're putting in the new signs that there's sign area for the new businesses going in there?

Bob Kerr: The sign details need to be presented that meet the ordinance. What you're going to do sign-wise.

Ralph Larson: We'll have to review the ordinance.

Gary Moore: Unless we're requesting a waiver which was actually previously denied.

Ginny Weeks: That we can't do.

Bill Brierly: Did I hear that it was previously denied for lack of details?

Linda Rogers: For lack of details.

Bill Brierly: So maybe if you had the right detail, they might....

Gary Moore: I wasn't here then either so forgive me.

Bill Brierly: Sounds to me that if you had the right kind of detail and they could really see what you are proposing then it might be a go.

Ginny weeks: Isn't that a Board of Adjustment thing?

Linda Rogers: I don't know who waives the signs. It depends on what the waiver is.

Bob Kerr: It depends on what the waiver is. You have come back and tell us what the details that you'd like to see.

Ralph Larson: Let me ask you this. Would you rather see one sign, one larger sign to accommodate what we need to accommodate, or an additional sign. Maybe they both need a waiver, I don't know.

Bill Brierly: I'd like to see one sign myself.

Ralph Larson: Anyone else have any thoughts as to one sign versus two. In other words, the existing sign there maybe has to be larger.

Ginny weeks: We'd like to see the plan of the signs on the building. We understand they are going to be standardized, according to the testimony by Mr. Larson.

Bob Kerr: It doesn't matter what that is. If you want to - what the signs...

Ralph Larson: I can't show you. I don't know who's going to be in the building.

Ginny Weeks: I want to see it on the...

Bob Kerr: We don't know who the tenants are going to be and the signage that the tenant wants may dictate. They come back in and get their sign at that point for a building.

Gary Moore: The building signs are a separate permit and it's a separate process which has input then.

Louise Frey: I'm talking the monument sign.

Ralph Larson: We're going to address that.

Gary Moore: Well that we're going to address.

Gene Steele: I'd rather see one sign than more than one. Don't ever want to see two signs there, I'd rather see one.

Gary Moore: So even if it's slightly larger or...

Linda Rogers: Slightly larger than the one the one that's already there?

Gary Moore: No, I mean obviously we're not going to make it...

Gene Steele: Well, you need more space to put the names of the more companies coming in there.

Gary Moore: Exactly, you got to have everybody's marquee on there or they're not happy.

Louise Frey: They all want the same size, but that monument sign is full now.

Ralph Larson: Well they all don't get the same size.

Gary Moore: Correct.

Ralph Larson: We'll try to work with what...we'll come back with one sign and see how we do.

Bill Brierly: I think one sign works best and if you really have the detail on it they would certainly be able to make that decision one way or the other, maybe a good decision if it's up to Town code.

Linda Rogers: Did all the points that you were reading a while ago get issued that you want to address?

Ginny Weeks: I imagine so. I mean, I just want to know, I would love to know, before the May 29<sup>th</sup> meeting what was decided at the City Council meeting when the final site plan was given.

Michael Filicko: Absolutely.

Ginny Weeks: And a resolution if there was one. And I think we need to know that before. Who do I ask to get that?

John Brady: What I am going to do is ask James to make a note that for the package that is prepared for the meeting for the 29<sup>th</sup>, then a copy of the council minutes from January 6<sup>th</sup>, 2003 and any ordinance or resolution referring to the site plan, copies of those documents be made available to all members of P & Z and to the applicants.

Ginny Weeks: Minutes or transcripts?

John Brady: I don't think there is a transcript. I think it's going to minutes and a resolution, but I am going to have to have James check to see what there is and tell them tomorrow to have Robin or Town Manager call me or Stephanie or Julie or whoever is assigned that task.

Linda Rogers: Is there...

John Brady: Almost a whole roll call, I forgot to...

James Craig: January 6<sup>th</sup>, 2003 John?

John Brady: January 6<sup>th</sup>, 2003. And I believe that's the date that's in Eric Evans' letter. Yes.

Linda Rogers: Is there anything else we need to talk about what's being built? Any questions you have about anything that may need to be put on this preliminary site plan so when they come we're not all of sudden standing here with 400 different things that we're asking them brand new that they're not expecting?

Ginny Weeks: No, I have one question for the city attorney's office. If in preliminary site plans we don't get everything down on that that we want, is there a chance to revisit something at final site plan or is not doing it a preliminary site plan the equivalent to a waiver?

John Brady: I came in I was the Town Attorney, you promoted me to City Attorney. That sounds like a reclassification of pay. I believe to answer your question that the factors for preliminary site plan have to be put pretty solid into place but final site plan approval and what is then, that approval goes to the town Council, that's the final opportunity, but you can't make a substantial change between preliminary and final. The difference between preliminary and final has always been traditionally done with minor tweaking of the plan. Not like changing 50 parking spots or dropping a new building in.

Ginny Weeks: So we all understand that if these plans are not really well detailed, we may not be able to pass them because we don't have what we need.

John Brady: I believe through the history of these applicants, they understand that.



Louise Frey: Just a little housekeeping when you bring in the new plans, I would like the owner's certification signed and filled out please.

Louise Frey: Its part of our checklist and it was not done.

Ginny Weeks: Have you brought that checklist for our preliminary site plan?

Linda Rogers: Is that...

John Brady: On a preliminary site plan the owner certification or a letter from the owner saying that the representative has their authority to do that. I believe you did here tonight and you've heard previously that he is a partner of the (unintelligible) so I believe you are able to sign on behalf of that LLC.

Louise Frey: I believe the ordinance does say this has to be signed.

John Brady: It does say it has to be signed. So, you're right Mrs. Frey. I'm not trying to contradict you I'm just saying...I'm just telling them a way to sign it.

Bob Kerr: And there is nothing in here, reading really quickly, that say this goes before Town Council so when you give final approval that is the approval. It does not...you get preliminary typically they go back and finalize the drawings and that's more the details that really have already been shown to a lot of detail on here - the water & sewer details and that type of thing - how it actually gets constructed.

Ginny Weeks: Wait, where is the checkpoint to make sure those things get done if it doesn't come back to us or it doesn't go to council. Where's this....

Bob Kerr: When it comes to you as a final drawing, that's where you do not add or subtract anything. You accept it or you deny it. Then it becomes the Town's responsibility, the code enforcement officer, and whoever else is doing the reviews and inspections, that it be constructed in accordance with those plans.

Ginny Weeks: For example, on the previous one, getting back not meaning to, this is a matter of procedure with Town method, where they had agreed to do the irrigation...

Bob Kerr: They did not agree in writing on the plan.

Ginny Weeks: That's what I am saying. Well, where did it stop that even though they said it, and it was in Eric's letter that those things were to be included in the plan and it never got included in the plan, where did it break down?

John Brady: I think the phrase "the devil and the paperwork" is where it broke down.

Ginny weeks: And what do we have in place now to prevent that?

John Brady: What is in place now is I write a very detailed resolution when you pass one of these and that's why we have a better taping system and a very detailed record and that we stop, catch a breath, and have had to take a recess for a couple minutes to make sure that all the stipulations were properly put down on the form of the resolution and that's why I have been trying to draft those resolutions the last 6 months to try and make sure we have a proper paper trail.

Louise Frey: During construction, if they don't, if everything is in order as far as resolution and everything and when they are constructing this that they don't do that. What happens next.

John Brady: Code enforcement officer can issue a stop work permit or CO.

Louise Frey: You can do that.

John Brady: Yes, that's in the power and I've seen it...

Louise Frey: Then how come it wasn't done in Shipbuilders? How come they couldn't do it in Shipbuilders?

John Brady: That matter's currently in litigation and I am not the council for the Town in that matter.

Louise Frey: Ok.

Linda Rogers: Is that it?

Ginny Weeks: That's it. So, that's it. So basically what you're saying is as long as we verbalize the need that they don't get the final site plans, that's recorded or whatever, what we say overcomes the site plan.

John Brady: You have here your final...right, in that the night of the final site plan review, you want to make sure the resolution is very clear as to exactly what are the developer's obligations, what are any concessions if anything you are making from the ordinances, and to make sure everybody has a complete understanding of what is supposed to be constructed there so if something happens, which we hope doesn't happen, but if something does, it is very clear for an appropriate court to see apple was promised, orange was delivered, that's the problem.

Louise Frey: And your resolution will be a big instrument in that.

John Brady: That's my job.

Louise Frey: And if it's not on the site plan?

John Brady: That's when I get fired.

Bob Kerr: It doesn't have to be on the preliminary, it has to be on the final. The other thing is, this is not the only time that there have been problems like this. The place that just opened on the other side of the river, opened with many things on the site plan not being completed when it was open, and everybody was glad to see that open. And there was a lot of pressure to allow that to open.

Louise Frey: Who's on the other side of the river?

Ginny Weeks: The Sausage Factory.

Bob Kerr: The Sausage Factory. There were many things over there not done before the Town...

Louise Frey: Absolutely right, and they shouldn't have opened.

Gary Moore: Did they have an irrigation system?

Ginny Weeks: They don't have any landscaping.

Gene Steele: Thank you gentlemen.

Ginny Weeks: Motion to adjourn.

Linda Rogers: Yes

Gene Steele: Second.

Linda: Okay.

Motion to adjourn at 9:31 p.m.